

# **भारत का राजपत्र** **The Gazette of India**

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 3] नई दिल्ली, शनिवार, जनवरी 18, 1969/पैज 28, 1890

No. 3] NEW DELHI, SATURDAY, JANUARY 18, 1969/PAUSA 28, 1890

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

नोटिस

NOTICE

नीचे लिखे भारत के असाधारण राजपत्र 3 जनवरी, 1969 तक प्रकाशित किये गये :—

The undermentioned Gazettes of India Extraordinary were published up to the 3rd January 1969:—

Issue No.	No. and Date	Issued by	Subject
467	S. O. 4463 dated 10th December 1968.	Ministry of Commerce.	Inspection of automobile spares, Components and accessories prior to export.
468	S. O. 4464 dated 11th December 1968.	Ministry of Information and Broadcasting.	Approval of films annexed therein.
469	S. O. 4465 dated 11th December 1968.	Election Commission of India.	Amendment of S. O. 2560 of 31st August 1968.
470	S. O. 4466 dated 12th December 1968.	Ministry of Food, Agriculture, Community Development and Cooperation.	Direction by Central Government in relation to prices, stocks and movements of Cattle fodder.
471	S. O. 4467 dated 13th December 1968.	Ministry of Commerce	Further amendments of Exports (Control) Order, 1968.
472	S. O. 4468 dated 13th December 1968.	Election Commission of India.	Appointments of Returning Officers and Assistant Returning officers by the Election Commission for the State of Punjab.

Issue No.	No. and Date	Issued by	Subject
	एस० ओ० 4469 दिनांक 13 दिसम्बर, 1968	भारत निर्वाचन आयोग	निर्वाचन आयोग द्वारा रिटर्निंग आफिसर तथा सहायक रिटर्निंग आफिसरों को पंजाब राज्य के लिये नियुक्त करना ।
473	S. O. 4535 dated 17th December 1968.	Ministry of Commerce.	Inspection of Carbon paper prior to export."
474	S. O. 4536 dated 18th December 1968.	Ditto	Inspection of linoleum prior to export.
475	S. O. 4537 dated 18th December 1968.	Ministry of Information and Broadcasting.	Approval of film annexed therein.
	एस० ओ० 4538 दिनांक 18 दिसम्बर 1968	सूचना और प्रसारण मंत्रालय	अनुसूची में दी गई फिल्म का स्वीकृत किया जाना ।
476	S. O. 4539 dated 19th December 1968.	Ministry of Commerce	Further amendment of Imports (Control) Order, 1955.
477	S. O. 4540 dated 19th December 1968.	Ministry of Home Affairs.	Extension of the period of the Commissions of Inquiry Act, 1952 by the Central Go- vernment.
478	S. O. 4541 dated 20th December 1968.	Ministry of Food, Agri- culture, Community Development and Cooperation.	Fixation of maximum prices of Vegetable Oil products.
479	S. O. 4542 dated 20th December 1968.	Ministry of Law.	Further amendment of the Con- duct of Elections Rules, 1961.
480	S. O. 4543 dated 23rd December 1968.	Ministry of Finance.	Grant of recognition to the Securi- ties Contracts (Regulation) Act, 1956.
	एस० ओ० 4544 दिनांक 23 दिसम्बर 1968	वित्त मंत्रालय	प्रतिभूति करार (विनियमन) अधिनियम 1956 की धारा 3 के अन्तर्गत मान्यता प्रदान करना ।
481	S. O. 4637 dated 24th December 1968.	Ministry of Education.	Re-Constitution of the Copy right Board by the Central Govern- ment.
	एस० ओ० 4638 दिनांक 24 दिसम्बर 1968 ।	शिक्षा मंत्रालय	कापीराइट अधिनियम 1957 के अनुसार कापीराइट बोर्ड का पुनर्गठन ।
482	S. O. 4639 dated 26th December 1968.	Ministry of Finance.	Direction by the Central Govern- ment that assets and Liabilities of Jupiter General Insurance Co. Ltd., Bombay be transferred to and vested in the L.I.C. of India.

Issue No.	No. and Date	Issued by	Subject
	एस० ओ० 4640 दिनांक 26 दिसम्बर, 1968।	वित्त मंत्रालय	केन्द्रीय सरकार एतद्वारा निदेश देती है कि जुपिटर जनरल इन्शुरेन्स कम्पनी लिमिटेड बम्बई से सम्बन्धित आस्तियाँ और दायित्वों का 31 दिसम्बर 1968 से जीवन बीमा निगम में अन्तर्गत और और निहित होना।
483.	S. O. 4641 dated 26th December, 1968.	Ministry of Finance.	Direction by the Central Government for further amendment of S.O. 3302 of 14th September, 1967.
	एस० ओ० 4642 दिनांक 26 दिसम्बर, 1968।	वित्त मंत्रालय	केन्द्रीय सरकार एतद्वारा निदेश देती है कि 14 सितम्बर 1967 के सां० आ० संख्या 3302 की अधिसूचना में और संशोधन किया जाए।
484.	S. O. 4643 dated 26th December, 1968.	Ministry of Finance	Amendments of S. O. 4304 of 2nd December, 1968.
485.	S. O. 4644 dated 26th December, 1968.	Election Commission of India.	Amendments of S.O. 2960 of 31st August, 1968 by the Election Commission.
486.	S. O. 4645 dated 27th December, 1968.	Ministry of Information and Broadcasting	Approval of films annexed therein.
	एस० ओ० 4646 दिनांक 27 दिसम्बर, 1968।	सूचना और प्रसारण मंत्रालय।	अनुसूची में दी गई फिल्मों का स्वीकृत किया जाना।
487.	S. O. 4647 dated 27th December, 1968.	Election Commission of India.	By-election to the House of the People from Nagercoil Parliamentary Constituency.
	एस० ओ० 4648, दिनांक 27 दिसम्बर, 1968।	भारत निर्वाचन आयोग	नागरकोइल संसदीय निर्वाचन-क्षेत्र से लोकसभा के लिये उप-निर्वाचन।
488.	S. O. 4649 dated 27th December, 1968.	Ministry of Commerce	Further amendments of Exports (Control) Order, 1968.
489.	S. O. 4650 dated 30th December, 1968.	Election Commission of India.	Amendments of S. O. 2960 of 31st August, 1968.
490.	S. O. 4651 dated 30th December, 1968.	Ditto	Amendment of S.O. 2960 of 31st August, 1968.
491.	S. O. 4652 dated 30th December, 1968.	Ministry of Commerce	Extension of term of Shri T. G. Chowdhari for a further period upto 3rd March, 1969.
492.	S. O. 4653, dated 30th December, 1968.	Ministry of Home Affairs.	Appointment of 14th January 1969 as the date on which the Madras State (Alteration of Name) Act, 1968 comes into force.

Issue No.	No. and Date	Issued by	Subject
493.	S. O. 4654, dated 30th December, 1968.	Ministry of Finance	Extension of period for making declarations by licensed dealers and refiners by the Administrator.
494.	S. O. 4655 IECA/3/8/68, dated 30th December, 1968.	Ministry of Commerce	Further amendment of Imports (Control) Order, 1955.
495.	S. O. 4656, dated 31st December, 1968.	Ministry of Food, Agriculture, Community Development and Co-operation.	Corrigendum to S.O. No. 3464 of 24th September, 1968.
496.	S. O. 4657, dated 31st December, 1968.	Election Commission of India.	Further corrections of Delimitation of Parliamentary and Assembly Constituencies Order, 1966.
1.	S. O. 69, dated 1st January, 1969.	Ditto	To fill vacancy caused by the resignation of Shrimati Vijaya Lakshmi Pandit from 55-Phulpur Parliamentary Constituency of Uttar Pradesh.
	S. O. 70, dated 1st January, 1969.	Ditto	Fixation of dates for nominations, Scrutiny of nominations, with drawal of candidatures and completion of Election of 55-Phulpur Parliamentary Constituency.
	S. O. 71, dated 1st January, 1969.	Election Commission of India.	Fixation of time of Poll of 55-Phulpur Parliamentary Constituency.
	एस० ओ० 72, दिनांक 1 जनवरी, 1969 ।	भारत निर्वाचन आयोग	श्रीमती विजयलक्ष्मी पंडित 55-फूलपुर संसदीय निर्वाचन क्षेत्र से त्याग पत्र दे देने के कारण स्थान रिक्त होने से एक व्यक्ति को निर्वाचित करना ।
	एस० ओ० 73, दिनांक 1 जनवरी, 1969 ।	वही	55-फूलपुर संसदीय निर्वाचन क्षेत्र के लिये नामनिर्देशन, नामनिर्देशनों की संश्लेषण, अभ्यर्थिता वापस लेने और अंतिम तारीख आदि नियत करना ।
	एस० ओ० 74, दिनांक 1 जनवरी, 1969 ।	वही	55-फूलपुर संसदीय निर्वाचन क्षेत्र में होने वाले उप-निर्वाचन के लिये एतद्वारा समय नियत करना ।
2.	S. O. 75, dated 1st January, 1969.	Election Commission of India.	To fill the vacancy of 6-Hoshiarpur Parliamentary Constituency in the State of Punjab.

Issue No.	No. and date	Issued by	Subject
	S. O. 76, dated 1st Jan., 1969.	Election Commission of India.	Fixation of last dates of nomination and election etc. of 6-Hoshiarpur Parliamentary Constituency.
	S. O. 77, dated 1st Jan., 1969.	Ditto.	Fixation of time of Poll of 6 <sup>th</sup> Hoshiarpur Parliamentary Constituency.
	एस० ओ० 78, दिनांक 1 जनवरी 1969	भारत निर्वाचन आयोग	6-होशियारपुर संसदीय निर्वाचन क्षेत्र का निर्वाचन शुभ्य घोषित होने के परिणामस्वरूप, एक व्यक्ति निर्वाचित करना ।
	एस० ओ० 79, दिनांक 1 जनवरी 1969	वही	6-होशियारपुर संसदीय निर्वाचन क्षेत्र के लिये अंतिम तारीख आदि नियत करना ।
	एस० ओ० 80, दिनांक 1 जनवरी 1969	वही	6-होशियारपुर संसदीय निर्वाचन क्षेत्र में होने वाले उप-निर्वाचन के लिये एतद्वारा समय नियत करना ।
3	S. O. 81, dated 1st Jan., 1969.	Election Commission of India.	Appointment of Officers to assist the Returning Officer for 55-Phulpur Parliamentary Constituency.
	एस० ओ० 82, दिनांक 1 जनवरी 1969	भारत निर्वाचन आयोग	55-फूलपुर संसदीय निर्वाचन क्षेत्र के रिटर्निंग आफिसर को सहायता करने के लिए आफिसरों को नियुक्त करना ।
4	S. O. 83, dated 1st January, 1969.	Ministry of Information and Broadcasting	Approval of Film annexed therein.
5	S. O. 84, dated 1st January, 1969.	Ministry of Finance	Exemption of certain goods from the whole of the duty of customs leviable thereon by the Central Govt.
6	S. O. 85, dated 3rd January, 1969.	Ministry of Commerce	Amendment made by the Central Govt. of Order of the Ministry of Commerce of 22nd August, 1968.
	एस० ओ० 86, दिनांक 3 जनवरी 1969	वाणिज्य मंत्रालय	वाणिज्य मंत्रालय के आदेश दिनांक 22 अगस्त 1968 में केन्द्रीय सरकार द्वारा संशोधन करना ।
7	S. O. 87, dated 3rd January, 1969.	Election Commission of India.	Amendments of S.O. 2960 of 31st August, 1968.

ऊपर लिखे असाधारण राजपत्रों की प्रतियाँ प्रकाशन प्रबन्धक, सिविल लाइन्स, दिल्ली के नाम माँगपत्र भेजने पर भेज दी जाएंगी। माँगपत्र प्रबन्धक के पास इन राजपत्रों के जारी होने की तारीख से 10 दिन के भीतर पहुँच जाने चाहिए।

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

## भाग II—खण्ड 3—उपखण्ड (ii)

## PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों और (संघ क्षेत्र प्रशासन को छोड़कर) केन्द्रीय प्राधिकरणों द्वारा जारी किये गए विधिक आदेश और अधिसूचनाएं।

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).

## ELECTION COMMISSION OF INDIA

New Delhi, the 5th September 1968

S. O. 172.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the judgment delivered on the 14th June, 1968, by the Judicial Commissioner, Tripura in Election Petition No. 1 of 1967.

IN THE COURT OF THE JUDICIAL COMMISSIONER TRIPURA, AGARTALA

(Original Jurisdiction)

PRESENT:

The Hon'ble Shri C. Jagannadhacharyulu, B.A., B.L., J.C.

The 14th day of June, 1968

ELECTION PETITION 1 OF 1967

[C.M.P. (Election) No. 80 of 1967]

BETWEEN

Shri Birendra Chandra Dutta, S/o Late Jagneswar Dutta, residing at Hari Ganga Basak Road, Agartala, candidate for election to Parliamentary from the Tripura West Parliamentary Constituency in 1967.—  
*Petitioner.*

AND

Shri J. K. Chowdhury, S/o Late Hara Kumar Chowdhury, residing at Joynagar, Agartala, Tripura, candidate returned in the election to Parliamentary Constituency—*Respondent.*

(Election petition U/S 81 of the Representation of the People Act, 1951 for declaration that the election of the respondent to the Lok Sabha from the Tripura West Parliamentary Constituency is void and for further declaration that the petitioner himself had been duly elected).

This election petition coming on for hearing before me from 21st May, 1968 to 25th May, 1968 and from 27th May, 1968 to 1st June, 1968 in the presence of Shri B. C. Dev Barma, Shri M. K. Datta and Shri M. Majumdar, Advocates for the petitioner and Shri R. Ghosh, Shri R. C. Bhattacharjee, Shri J. K. Roy, Shri H. Datta, Shri B. B. Gupta and Shri M. K. Bhowmik, Advocates for the respondent and having stood over for consideration till today the Court delivered the following:—

## JUDGMENT

1. This is an election petition filed on 4th April, 1967 under section 81 of the Representation of the People Act, 1951 (Act 43 of 1951)—hereinafter called as the Act by one Shri Birendra Chandra Dutta against Shri J. K. Chowdhury for declaration that the election of the respondent to the Lok Sabha from the Tripura West Parliamentary Constituency is void and for further declaration that the petitioner himself had been duly elected.

2. In the last general election, which took place on 18th February, 1967 to the Lok Sabha from Tripura West Parliamentary Constituency, the later comprised of 15 Bidhan Sabha Constituencies namely, Mohanpur, Agartala Sadar I, Agartala Sadar II, Agartala Sadar III, Uttar Debendrangar, Old Agartala, Takarjala, Bishalgarh, Charilam, Sonamura South, Sonamura North, Salgar, Belonia, Mohuripur.

and Agartala town. The last date for filing of nomination papers was 20th January, 1967. The date for scrutiny of the nomination papers was 21st January, 1967. The petitioner contested for the said West Parliamentary Constituency as a candidate of the United Front (U. P.) which consisted of 4 Political parties namely, Communist Party of India (Marxist), Communist Party of India, Tripura Congress and Tripura Tapshili Jati Parishad. The respondent contested the election on the Congress ticket. The polling took place on 18th February, 1967. The counting was held on 21st February, 1967 and 22nd February, 1967. 2,23,765 votes were polled. Out of them 5,657 ballot papers were rejected. So, there were 2,18,108 valid votes. The petitioner secured 92,143 votes, while the respondent secured 1,25,965 votes with a margin of 33,822 votes. So, the District Magistrate of Tripura, who was the returning officer for the Constituency in question, declared the respondent as having been duly elected.

3. The petitioner filed the present petition under section 81 of the Act on 4th April, 1967 within the statutory period of 45 days, challenging the election of the respondent on various grounds. They can be classified under four categories as mentioned in paras 5 and 6 read with paras 7 to 10 of his petition. The first category is that there were reception of votes, which were void, and improper reception within the meaning of section 100(1)(d)(iii) of the Act. The second category is that the election of the respondent was materially affected by non-compliance with the provisions of the Act and the rules and orders framed thereunder and the Constitution of India within the meaning of section 100(1)(d)(iv) of the Act. The third category is that corrupt practices were committed by the respondent, his election agent and others with their consent within the meaning of section 100(1)(b) of the Act. The fourth category consists of corrupt practices said to have been committed in his interests by agents, other than his election agent and the result of his election was materially affected within the meaning of section 100(1)(d)(ii) of the Act. The petitioner enumerated various corrupt practices in paras 7 and 8 of his petition. In para 9 of his petition, he mentioned how the result of the election was materially affected by non-compliance with the provisions of the Act and the rules. In para 10 also he mentioned how the non-compliance with the provisions of the Act and the rules and the orders materially affected the result of the election. He filed an affidavit dated 4th April, 1967 along with the petition.

4. After the respondent received the summonses and a copy of the petition, he appeared and filed C.M.P. 206 of 1967 on 15th September, 1967 under Order 6 rule 5 C.P.C. and section 87 of the Act to direct the petitioner to furnish better particulars of the allegations made in the petition. The petitioner's Advocate stated that he would take the risk if his petition was found to be defective and refused to furnish better particulars. So, in view of his representation, the petition was dismissed on 19th September, 1967. Then the respondent filed his written statement denying the allegations of the petitioner. He denied the various charges brought against him and pleaded that the election was properly held and that it was not vitiated.

5. On the pleadings the following issues were framed on 20th September, 1967.

- (i) Is the petition not maintainable in the present form?
- (ii) Whether the papers furnished to the respondent along with the summonses to appear and answer were not legally attested as required by section 81(3) of the Representation of People Act of 1951 and whether the petition is not maintainable?
- (iii) Whether the petition does not contain the full particulars and material facts as required by section 83 of the Act and if not, whether the petition is liable to be dismissed?
- (iv) Whether the various acts of corrupt practices mentioned in the petition are duly supported by affidavits, as required by section 83 (3) of the Act, if not, what is the effect?
- (v) Whether the affidavit filed by the petitioner in support of the petition is bad in law, and whether it does not comply with the provisions of section 83 of the Act and the Rules made thereunder. If so, whether the petition is liable to be dismissed?
- (vi) Is the election petition liable to be dismissed for non-compliance with the provisions of section 81 and section 83 of the Act?
- (vii) Is the case barred by waiver, estoppel and acquiescence?
- (viii) Are the allegations of corrupt practices covered by section 123 of the Act?

- (ix) Has the result of the election been materially affected by non-compliance with the provisions of the Act, Rules and orders?
- (x) Is it competent to the petitioner to raise any objection at this stage about the despatch, scrutiny and opening of ballot papers and counting of votes?
- (xi) Whether there was any discrepancy between the number of ballot papers used or issued to the Presiding officers and the number of ballot papers found for counting on the table, as alleged in the petition. If so, whether it had materially affected the result of the election?
- (xii) Whether the election of the respondent is void?
- (xiii) Is the petitioner entitled to be declared to be duly elected to the seat?
- (xiv) Whether any corrupt practices as alleged in the petition had been committed by the respondent or his election agent or any other person with the consent of the respondent or his election agent?
- (xv) To what relief is the petitioner entitled?

6. On 2nd November, 1967 the respondent filed C.M.P. 236 of 1967 under section 83 and 87 of the Act read with Order 6 rule 16 and section 151 C.P.C. to strike off the allegations made in paras 5 to 10 of the election petition on the ground that they were vague. The petitioner filed C.M.P. 238/1967 objection petition. An order was passed by this Court on 6th November, 1967, under which the petitioner was directed to furnish better particulars of the various corrupt practices averred in paragraphs 7 and 8 of the petition, except the one relating to one Hari Mohan Deb Nath mentioned in paragraph 7 (vii) of the petition. The petitioner was also directed to file a proper affidavit according to rule 94(A) read with form 25 of the Conduct of Election Rules of 1961 (hereinafter called as the Rules of 1961). It was mentioned in the order that better particulars of the allegations made in paragraphs 7 and 8 of the petition should be furnished by the petitioner by filing a separate schedule and an affidavit and that, if he did not comply with the order in full or in part evidence regarding the corrupt practices would be recorded only about those matters whose particulars were mentioned as required by the order and that the others would be deemed to have been struck off. The petitioner accordingly filed C.M.P. 251 of 1967 together with a schedule and a fresh affidavit on 13th November, 1967 describing in detail and furnishing better particulars of the incidents of corrupt practices alleged by him in paragraphs 7 and 8 of the petition. The respondent filed additional written statement on 19th January, 1968 and the petition was allowed on 20th January, 1968. The following additional issues were framed on 20th January, 1968:—

- (i) Whether the amendment petition is barred by limitation?
- (ii) Whether the amendment petition is in substance a new petition?
- (iii) Whether the amendment petition introduced new grounds of charges and allegations and altered the nature of the original petition?
- (iv) Whether the above objections are not tenable in view of the fact that the amendment had already been ordered?

#### 7. Issue (I):—

Though the respondent did not take any place in his written statement or additional written statement that the election petition is bad for non-joinder of parties and though no issue was framed on this point, the learned Counsel for the respondent contended that as the petitioner made allegations of corrupt practices against one Hari Mohan Deb Nath (R.W. 9) and Shri S. L. Singh, the then Congress Chief and Chief Minister (who is also at present the Chief Minister) of Tripura they are necessary parties under section 82 of the Act, but that they were not made parties and that, therefore, the petition is liable to be dismissed under section 86 (1) of the Act. His contention is that the petitioner not only claims declaration that the election of the returned candidate, namely the respondent is void, but that he also claims a further declaration that he had been duly elected and that R.W. 9 Hari Mohan Deb Nath and Shri S. L. Singh, against whom allegations of corrupt practices were made in the petition, are the "other candidates" within the meaning of section 82(b) of the Act, that they should have been added as respondents in the petition and that, therefore, the petition is liable to be dismissed under section 86(1) of the Act.



8. As can be seen from *Jagan Nath Vs. Jaswant Singh and others* (A.I.R. 1964 S.C. 210) the general rule is well-settled that an election contest is not an action at law or a suit in equity, but that it is a purely statutory proceeding unknown to the common law and that the statutory requirements of election law must be strictly observed. It is also to be borne in mind that though the election of a successful candidate is not lightly to be interfered with, one of the essentials of the election law is to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. This decision was also followed in *Tribeni Ram Vs. Satadeo Singh and others* (A.I.R. 1966 Allahabad 20) wherein it was held that no general equitable considerations, which are not recognised or support by the Act or by the rules framed thereunder, can be imported into proceedings relating to election petitions.

9. It has to be mentioned in this connection that R.W. 9 Hari Mohan Deb Nath was a candidate for Tripura Bidhan Sabha from Mohanpur Constituency. But, he subsequently withdrew his candidature. The case of the petitioner is that he withdrew the candidature as consideration for a promise made by Shri S. L. Singh that the latter would make him the President of Mohanpur Development Block. Shri S. L. Singh contested for a seat in the Bidhan Sabha from Sadar II, Agartala Constituency. So, both of them were candidates from Assembly Constituencies and not for the Lok Sabha from the West Parliamentary Constituency in question. The contention of the learned Counsel for the respondent is that the expression "any other candidate" in section 82(b) of the Act means any candidate either for the Assembly Constituencies or the Parliamentary Constituency and contended that R.W. 9 Hari Mohan Deb Nath and Shri S. L. Singh are, therefore, necessary parties under section 82(b) of the Act. He relied on the definition of "candidate" in section 79(b) of the Act, which defines "candidate" as a person who has been or claims to have been duly nominated as a candidate at any election and the definition further reads that any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate. So, even if a candidate withdraws his candidature, then also he falls under the definition of candidate in section 79(b) of the Act. Vide *Mool Chand Vs. Rulia Ram Panna Lal and another* (A.I.R. 1963 Punjab 516). It was held that section 82(a) of the Act concerns contesting candidates who include validly nominated candidates, who have not withdrawn, and returned candidates and that section 82(b) also includes candidates who, after being validly nominated, have withdrawn their candidature. To the same effect are the decisions in *Gulabchand Palliwal Vs. Gobind Sahai and others* (A.I.R. 1964 Rajasthan 155) and *Har Swarup and another Vs. Brij Bhushan Saran and others* (A.I.R. 1967 S.C. 836). In the above decisions as well as in *Har Swarup and another Vs. Brij Bhushan Saran and another* (A.I.R. 1964 Allahabad 340), *Mohan Singh Vs. Bhanwarlal and others* (A.I.R. 1964 S.C. 1366), *Amin Lal Vs. Muna Mal* (A.I.R. 1965 S.C. 1243), it was held that a candidate against whom allegations of corrupt practices are made in the election petition, wherein the petitioner claims further declaration that he himself has been duly elected, is a necessary party, that the petition is bad for his non-joinder and that it is liable to be dismissed under section 86 of the Act. But, a close study of all the above rulings goes to show that the candidates who contested or who had withdrawn and against whom allegations of corrupt practices were made in the election petitions were all from the same Constituency, from which the petitioner also stood. Part VI of the Act relates to disputes regarding elections. It begins with section 79 and ends with section 122. Section 80 of the Act lays down that no election be called in question except by an election on petition presented in accordance with the provisions of Part VI of the Act. Section 2(1)(d) of the Act defines the word "election" as "an election to fill a seat or seats in either House of the Parliament or in the House or either House of the Legislature of a State other than the State of Jammu and Kashmir". So, whenever an election to a seat either in the Parliament or in the House of the Legislature of a State is sought to be questioned, it can only be done by filing an election petition according to the provisions of Part VI. Section 81 lays down the grounds on which and the persons by whom an election petition must be filed. The person who is entitled to present an election petition calling in question any election is according to section 81 any candidate at such election or any elector. The explanation to section 81 lays down that the word "elector" used in sub-section (1) means a person who was entitled to vote at the election to which the election petition relates, whether he had voted or not. This shows that only that candidate or elector, who answers the description contained in section 81 of the Act, who can challenge the election for the particular Constituency. As such section 81 unmistakably goes to show that the intention of the Parliament was to confine the presentation of the election petition only to

the candidates or electors of the Constituency, to which the petition relates. So, in the context, "any other candidate occurring in section 82(b) or the Act only refers to "any other candidate for the particular Constituency" and not to any other Constituency. The reason why a candidate, against whom allegations of corrupt practices are made, is required to be made party is that he should be given an opportunity to meet the allegations made against him, before he is named by the High Court under Section 99(1)(a)(ii) of the Act if he has been proved at the trial to have been guilty of any corrupt practice. But, under the proviso to section 99(1) of the Act, the High Court is not empowered to name such a person who is not a party to the petition, unless section is taken under sub-clauses (a) and (b) of the proviso to section 99(1) of the Act. So, section 99 safeguards the interests of a person including a candidate from any other Constituency who is not a party to the petition and against whom allegations of corrupt practices are made. As such, a person who was not a candidate for the constituency in question is not a necessary party under section 82(b) of the Act. *Vide also Nardev Vs. Joti Saroom and others* (A.I.R. 1964 Allahabad 83) which is on all fours with the facts of the present case.

10. For the above reasons, I find on issue (i) that the petition is not bad for non-joinder of R.W. 9 Hari Mohan Deb Nath and Shri S. L. Singh.

#### 11. Issue (II).—

The respondent as R.W. 1 deposed in the Chief-examination that along with the summonses he received a copy of the election petition which was said to be a "true copy", without any endorsement that it was a true copy of the election petition. He was not cross-examined on this point. So, his evidence that the true copy of the election petition served on him does not bear the endorsement as true copy stands. The contention of the learned Counsel for the respondent is that section 81(3) the Act requires that every election petition shall be accompanied by a copy and that every such copy to be served upon the respondent shall be attested by the petitioner under his own signature to be a true copy of the petition, but that as in the present case it does not bear such an endorsement, the petition is liable to be dismissed. Though the respondent's Counsel relied on *Ch. Subbarao Vs. Member, Election Tribunal, Hyderabad and others* (A.I.R. 1964 S.C. 1027) and *Murarka Radhey Shyam Ram Kumar Vs. Rup Singh Rathore and others* (A.I.R. 1964 S.C. 1545) in support of his contention, they do not, in fact, support. In the former case the election petition was type written and the copies, which accompanied the petition, were carbon copies of the typescripts. The copies bore two signatures in original of the election petitioner authenticating both the contents of the petition as well as the verification thereof. But, the petitioner did not however insert the words "true copy" before or above his signatures. It was held that if the signature of the petitioner whose name was set out in the body of the petition was appended at the end, surely it authenticated the contents of the documents that if the signatories found on the copies were intended to authenticate the document to which it was appended namely, the copy, it would only mean that the copy did not reproduce the signature in the original, that there was no compelling necessity to hold that the signature were merely intended to be a copy of those on the original in order to spell out a non-compliance with section 81(3) of the Act, seeing that a signature in original was not needed on the copy and a writing copying out the name of the signatory would suffice, that the absence of a writing in the copy indicating the signature in the original would not detract a copy from being a true copy and that, in the circumstances, there was substantial compliance with the requirement of section 81(3) of the Act. In the other case, the copies served upon the respondent did not contain the signatures of the petitioner at the foot of the petition, though the original contained his signatures. It was held that when every page of the copy served on the respondent was attested to be a true copy under the signature of the petitioner, a fresh signature below the word "petitioner" was not necessary. In *Dr. Anup Singh Vs. (1) Shri Abdul Ghani and others* and (2) *Shri Lachman Singh* (A.I.R. 1985 S.C. 815) it was held that though the words "true copy" were not written on a copy of the petition above the signature there was substantial compliance with section 81 (3) of the Act, that the presence of the original signature in the copy was sufficient to indicate that it was attested as a true copy even though the words "true copy" were not written above the signatures in the copy and that the petition could not be rejected under section 80(3) of the Act. The ruling in *Ch. Subbarao Vs. Member Election Tribunal, Hyderabad and others* (A.I.R. 1964 S.C. 1027) mention above was relied on. In this case also as the petitioner signed the copy of the petition served upon the respondent, the petition is not liable to be dismissed though there was no endorsement of "true copy" on the petition. I find issue (ii) against the respondent.

## 12. Issue (III) and Additional Issue (1) to (IV):—

It has already been mentioned that in C.M.P. 236 of 1967 filed by the respondent and C.M.P. 238 of 1967 objection petition filed by the petitioner this Court passed an order dated 6th November 1967 directing the petitioner to furnish better particulars with regard to the corrupt practices mentioned in paragraphs 7 and 8 of the election petition. The contention of the learned Counsel for the respondent is three-fold. Firstly, he urged that the amendment petition C.M.P. 251 of 1967 filed by the petitioner on 13th November 1967 furnishing better particulars as ordered by the Court is barred by limitation, that it is in substance a new petition and that, therefore, it is liable to be dismissed. Whether the petitioner should be called upon to furnish better particulars or whether the election petition should be dismissed straightaway was considered by me in any order dated 6th November 1967. There is a distinction between "material facts" and "particulars of corrupt practices". Section 83 of the Act lays down what the petition should contain. Section 83(1)(a) lays down that an election petition shall contain a concise statement of material facts on which the petitioner relies. Clause (b) of sub-section (1) of section 83 also states that the election petition will set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practices and the date and place of the commission of each such practice. Section 86 of the Act which enjoins on the High Court to dismiss an election petition, shows that the High Court can straightaway dismiss only when it does not comply with the provisions of section 81 or section 82 or section 117 of the Act. It does not cover section 83. On the other hand, sub-section (5) of section 86 gives discretion to the High Court and allows it to permit the election petitioner, on such terms as to costs and otherwise as it may deem fit, to furnish particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may, in its opinion, be necessary ensuring a fair and effective trial of the petition. But, the Court shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. So, the Court is not entitled to dismiss the election petition for want of material facts or full particulars of the corrupt practices, which should be mentioned according to section 83 of the Act. But, the court is bound to give an opportunity to the election petitioner to amplify the particulars. *Vide* page 278 of Hallsbury's Laws of England, Volume XIV, third edition. The law in India is also the same. *Vide* page 382 of Doabia's Election Manual, Volume I, 1967 edition and also *Bhikaji Keshao Joshi and another Vs. Brijlal Nandal Bivani and others* (A.I.R. 1955 S.C. 610), *S. Kandaswami Vs. S. B. Aditvan* (A.I.R. 1959 Madras 288 and *Balwant Singh Vs. Lakshmi Narain and others* (A.I.R. 1960 S.C. 770). The Supreme Court held that the procedure, to be followed in cases where insufficient particulars of a corrupt practice are set forth in an election petition, is that it should not be dismissed *in Limine* merely because full particulars of a corrupt practice alleged in the petition are not set out, but that where an objection is raised by the respondent that the petition is defective for want of full particulars, the Tribunal is bound to decide whether the objection is well founded or not, that if the Tribunal unholds the objection, it should give an opportunity to the petitioner, to apply for leave to amend or amplify the particulars of the corrupt practices alleged and that, in the event of non-compliance with that order, the Tribunal may strike out charges which remain vague. So the procedure, already adopted by this Court in directing the petitioner to furnish full particulars of the alleged corrupt practices mentioned in paragraphs 7 and in the election petition, is correct. It cannot be said that the particulars mentioned in the amended petition and the schedule filed on 13th November 1967 changed the character of the petition and that in substance the amended petition is a new one.

13. There is, however, force in the second contention of the learned Counsel for the respondent that an amendment altering the nature of the charges or introducing new charge cannot be allowed, inasmuch as their introduction for the first time in the schedule on 13th November 1967 beyond the statutory period of 45 days is barred by limitation. Sub-section (5) of section 86 itself is clear on this point. It lays down that the High Court shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition *vide* also the passages at pages 36 and 37 of Volume II of Digest of the Election Law Reports (1955-1960). The contention of the learned Counsel for the petitioner is that the respondent did not take any objection to the petitioner letting evidence on the various alleged corrupt practices and in making the exhibits and that, therefore, it is not now open to the respondent to contend that there are new allegations in the schedule. He relied on *Balwant Singh Vs. Lakshmi Narain and others* (A.I.R. 1960 S.C. 770).

already referred to. But, his contention is not correct. The Supreme Court held that if despite the absence of full particulars of the corrupt practices the parties go to trial and evidence of the contesting parties is led on the pleas raised in the petition, the petition cannot be dismissed thereafter for want of particulars because the defect is one of procedure and not one of jurisdiction of the Tribunal to adjudicate upon the plea in the absence of particulars. This decision of the Supreme Court applied only when, in spite of the order directing the election petitioner to furnish better particulars, he failed to do so and the parties go to trial. But, it was not held that particulars of new corrupt practices, not previously mentioned in the petition, could also be introduced. This is prohibited by sub-section (5) of section 86 itself. In discussing the evidence on the various allegations of corrupt practices made by the petitioner, the evidence regarding new incidents has to be discarded. Thirdly, the learned Counsel for the respondent urged that the petitioner did not furnish all the details even in the new schedule filed on 13th November 1967. He relied on *Bhikaji Keshao Joshi and another Vs. Brijlal Nandlal Bhamare and others* (A.I.R. 1965 S.C. 619), *Balwan Singh Vs. Lakshmi Narain and others* (A.I.R. 1960 S.C. 770), *Chandrashekhar Singh Vs. Surjoo Prasad Singh and another* (A.I.R. 1961 Patna 189) and *Tribeni Ram Satyadeo Singh and others* (A.I.R. 1966 Allahabad 20) in support of his contention that the allegations are liable to be STRUCK OFF. He pointed out certain instances where the particulars are not in full. For example, in the case of test relief work and frought relief no exact dates were furnished. Only months and year were mentioned. Money sanctioned for each of the constructions was not noted. My order dated 6th November 1967 is that the petitioner should comply with the order in full or in part. I also mentioned in para 9 of my order the dates, timings and numbers might be approximately mentioned. So, in view of this order the allegations of the petitioner regarding the corrupt practices mentioned in the schedule cannot be struck off, unless they are very vague still.

14. For the above reasons, issue (iii) does not arise now in view of the order of this Court dated 6th November 1967 in C.M.P. 236 of 1967 and C.M.P. 238 of 1967. I find on additional issue (i) that the amendment petition is barred by limitation in so far as the new incidents are concerned. I find on the additional issue (ii) that the amendment petition is in substance a new petition only with regard to the new incidents and not with regard to the incidents already mentioned in the election petition. I find on additional (iii) that the amendment petition did not alter the nature of the original petition in so far as the particulars furnished in compliance with the order of this Court dated 6th November 1967 are concerned. I find on additional issue (iv) that the objections of the respondent regarding the particulars furnished by the petitioner about the matters covered by paragraphs 7 and 8 the original petition in pursuance of the order of this Court dated 6th November 1967 are not tenable.

#### 15. Issues (IV) and (V):—

The contention of the respondent's Counsel is that the affidavit filed with the petition with regard to the alleged corrupt practices is not according to the prescribed form 25 read with rule 94(A) of the Rules of 1961 and that, therefore, the allegations are to be struck off. He relied on *Satish Kumar Vs. Election Tribunal* (District Judges), Alwar and another (A.I.R. 1963 Rajasthan 157), and *Kamalnarain Sharma Vs. Pt. Dwarka Prasad Mishra and others* (A.I.R. 1965 M.P. 15), wherein it was held that the intention of the Legislature in introducing the proviso to section 83 of the Act is to prevent the petitioner from filing an election petition making wild allegations about corrupt practices and to impose on him a reasonable restraint, so that, if false statements are made, he can be prosecuted for perjury. It was also held that the Legislature also considered it proper that the Central Government should prescribe the form of affidavit so that the petitioner may be able to file affidavit in that form stating clearly which facts are true and which of them he believes to be correct on the basis of the information gathered from others, but that this does not mean that if an affidavit substantially complies with the form prescribed, it must be thrown out simply because it does not tally with the prescribed form in immaterial particulars. In my order, dated 6th November, 1967, in C.M.Ps. 136 of 1967 and 238 of 1967, I stated that the affidavit filed with the original petition regarding the alleged corrupt practices is very vague and laconic and that it is not in accordance with the form. So, the petitioner was directed to file it in accordance with form 25 prescribed under rule 94-A specifying the various particulars. Accordingly, the petitioner filed a separate affidavit on 13th November, 1967 regarding the corrupt practices alleged by him in the amended petition. This affidavit is according to the form 25. The contention of the petitioner's Counsel is that the previous affidavit regarding the other allegations in the election petition is not in proper

form. The previous affidavit contains only the allegation about R.W. 9, Hari Mohan Deb Nath mention in sub-paragraph (vii) of para 7A of the election petition, about which I held that further particulars were required. The previous affidavit regarding the said allegation is substantially in form and the allegation cannot be struck off. The petitioner's Counsel relied on *Kamal Narain Sharma Vs. Dwarka Prasad Mishra and others* (A.I.R. 1966 S.C., 436) to have the affidavit be sworn before the "District Clerk of Court" Jabalpur, who described himself as "Officer for Administering Oaths on Affidavits, Jabalpur". It was held that rule 94-A does not lay down before what kind of commissioner of oaths an affidavit should be sworn, that the "District Clerk of the Court" was a Commissioner of Oaths on affidavits and that he could be excluded only by taking an extreme and technical view which was not justified. This decision shows that a technical view about the form of affidavit need not be taken. The petitioner swore in his previous affidavit, filed with the election petition on 4th April, 1967, that the statements made by him in paragraphs 7 to 10 of his affidavit regarding the commission of corrupt practices of bribery, undue influence, circulation of leaflets and pamphlets inciting communal feelings and hatred between Bengalees and tribals and the particulars of such corrupt practices were true to his knowledge. This affidavit is now confined to item vii in paragraph 7A of the petition, inasmuch as a proper affidavit had been filed subsequently regarding the other alleged practices.

16. For the above reasons, I find issues (iv) and (v) against the respondent.

17. Issue (VI):—

In view of my findings on issues (ii) to (v) the election petition is not liable to be dismissed for non-compliance with the provisions of sections 81 and 83 of the Act. Finding accordingly.

18. Issue (VII):—

This issue was not pressed by the respondent's Counsel. I find issue (vii) in the negative.

19. Issues (IX), (X) and (XI):—

These issues are connected and are, therefore, considered together. The petitioned listed out a number of items in A to D in para. 9 and in A and B in para 10 of his petition regarding non-compliance with the provisions of the Act, the Rules and the orders with reference to the ballot papers and ballot boxes.

20. In para 9A, the petitioner alleged that after the polling was over the United Front polling agents were not permitted to put their signatures on sealed up paper packets and that they were not allowed to take note of the ballot paper accounts. There are no details as to where the polling agents of the United Front were not permitted to put their signatures and by whom they were not allowed to take note of the ballot paper accounts. The petitioner did not examine any polling agent or polling officer to prove his allegations. Under rule (46)(2) of the Rules of 1961 the presiding officer shall get the packets of the electoral rolls, unused ballot papers, cancelled ballot papers etc., sealed and may also permit such of those polling agents, who are present and who desire to affix their seals thereon, to put their seals on them. P. W. 10 (Atikul Islam) stated that he did not remember whether the United Front party had any seal. So, there was no question of the presiding officer not permitting United Front party polling agents to put the seals of the party on the packets. There is no provision for putting signatures on the sealed packets. So, the allegations in sub-para A are baseless.

21. In sub-para B of para. 9, the petitioner alleges that there was a great discrepancy between the total number of ballot papers printed and sent to Tripura and the total number of ballot papers sent to returning officers, that in a number of polling stations there was a discrepancy between the number of ballot papers used or issued to presiding officers and the number of ballot papers found for counting on the tables. P.W. 1, (Benu Sen Gupta) who was the election agent of the petitioner. P.W. 9 (Nripendra Chakravorty) who was a candidate set up by the United Front for Mohanpur Assembly Constituency and P.W. 26 the petitioner himself are the witnesses who spoke to this aspect of the case. The respondent examined the Chief Electoral officer and the Superintendent of the Government Press in Tripura as R.Ws. 2 and 13 to explain the discrepancies in the total number of ballot papers received for being used in the elections. The evidence of R.W. 2 (N. G. Choudhury) is that the local Government Press had no sufficient capacity to print the ballot papers, that he brought this fact to the notice of the Election Commission, that the latter asked him to get them printed

in the Central Government Press in Calcutta and that, accordingly, he gave an order for 3,04,000 and odd ballot papers for Tripura West Parliamentary Constituency to Calcutta Central Press. He received the ballot papers from 5th February, 1967 to 9th February, 1967. Then, he sent a portion of the ballot papers from 1,00,001 to 1,31,200 to Sonamura with instructions to the returning officer of Sonamura to count all the ballot papers sent to him and to divide them into smaller packets to be used in different polling stations. But, after counting, he reported to R.W. 2 (N. G. Choudhury) that the ballot papers fell short by 1460 from 1,18,541 to 1,20,000. Vide Ext. 2379. R.W. 2 (N. G. Choudhury) got this information by telegram and by telephone also on 11th February, 1967. Then on 14th February, 1967 he sent a telegram to the Central Government Press in Calcutta to print the missing ballot papers with their serial numbers and to despatch them as early as possible. Then the evidence of R.W. 2 (N. G. Choudhury) is that, on looking into the calendar, he found that 14th February, 1967 happened to be a public holiday on account of Saraswati Pujā.

He doubted whether he could send the ballot papers to Sonamura at least 4 or 5 days ahead of the scheduled dates of polls. So, to ensure that the polling would take place on the due dates, he instructed the Government Press, Tripura, to print the missing ballot papers with the above serial numbers. But, on 13th February, 1967 R.W. 2 (N. G. Choudhury) received the ballot papers duly printed with serial numbers from Calcutta and his evidence shows that in the same night he despatched them to Sonamura. Vide Ext. B-43. But, in the meanwhile R.W. 13 (Bhabananda Sarkar) the Superintendent of Government Press, Tripura got printed the required number of ballot papers. As he sent away the ballot papers received from Calcutta he preserved the ballot papers printed by R.W. 13 (Bhabananda Sarkar) in Agartala in a box Ext. A-2378 in the Treasury and produced it into the Court. The sealed packet was marked as Ext. B-41. R.W. 2's evidence further shows that the S.D.O., Sadar informed him on 14th February, 1967 that 900 ballot papers were marked in duplicate and that a bunch of 900 was missing, that then he wired to the Central Press in Calcutta to print again 900 ballot papers with the missing serial numbers and that in the meanwhile he gave those 900 ballot papers marked in duplicate to the local Press for being re-marked with the missing numbers. Ext. B-42 bundle refers to those 900 ballot papers, which were sent to R.W. 13 (Bhabananda Sarkar) for being re-marked. Thus, according to him, the ballot papers, which were received from Calcutta, only were used, the ballot papers got printed by R.W. 13 (Bhabananda Sarkar) were not used and they are in tact in Exts. B-41 and B-42 bundles. His evidence in the cross examination shows that the returning officer of Sonamura stated in Ext. A. 2379 telegram that serial Nos. 1,08,601 to 1,20,000 were not found due to duplicate numbering of ballot papers with serial Nos. 1,08,601 to 1,10,000 and that serial Nos. 1,20,651, 1,20,652, 1,29,427 and 1,29,428 were not found. He added that the returning officer phoned to him that the ballot papers bearing serial Nos. 1,18,541 to 1,18,600 were illegible. But, R.W. 2 (N. G. Choudhury) did not make any arrangement to reprint the 4 ballot papers mentioned above. His evidence is that he instructed the returning officer that the number of the missing ballot papers should be noted in the list. R.W. 2 (N. G. Choudhury) deposed that he got back the 1400 ballot papers by issuing Ext. A-2380 latter and remarked them for the Sadar Assembly Constituency. With regard to the 900 ballot papers required by the S.D.O., Sadar, R.W. 2 (N. G. Choudhury) stated in the cross-examination that according to Ext. A-2381 the number of ballot papers which fell short was 929 from 3,41,072 to 3,42,000. The Sadar S.D.O. stated in the letter Ext. A-2381 that the returning officer would be able to adjust the required number of ballot papers for the old Agartala Constituency by writing the serial numbers on the back of the ballot papers which were found with symbol without serial numbers. He further stated that if 29 ballot papers were adjusted by writing with hand the serial numbers then the ballot papers would have to be reprinted only from serial Nos. 3,41,101 to 3,42,000. So, R.W. 2 (N. G. Choudhury) agreed to his proposal and gave an order as per Ext. A-2382 to Calcutta Press to print the ballot papers from serial Nos. 3,41,101 to 3,42,000 instead of giving order for printing ballot papers from serial Nos. 3,41,072 to 3,41,100. He thereby allowed the returning officer, Sadar to mark with hand the un-numbered 29 ballot papers.

22. The evidence of R.W. 13 (Bhabananda Sarkar) is that after getting information by phone from R.W. 2 (N. G. Choudhury) to print 1,460 ballot papers, he got 1,500 ballot papers printed by way of caution to meet the exigencies and handed over 1,460 ballot papers found in Ext. B-41 and got the remaining ballot papers burnt in his presence. He got them numbered as 1,18,541 to 1,20,000. Ext. A-2376, shows that a class IV employee wrote that he numbered ballot papers as 1,18,541 to 1,20,000 and stated that their number was 2,500. Of course.

this is obviously a mistake because their number would be 1,500 Ext. A-2375 written by another class IV employee correctly mentions that 1,500 ballot papers were printed and that 750 were the total impressions Ext. X-22, also shows that the Assistant Foreman correctly wrote that 1,500 copies were printed. Ext. X-25 is a sample ballot papers received by R.W. 13 from the Election department on 11th February, 1967. Ext. X-24, is the first proof and Exts. X-22 and X-23 are the final proofs. According to him, though he gave an order in writing for printing and hand numbering 1,460 ballot papers, he verbally gave an order for printing 1,500 copies. Ext. X-23(b) shows that the paper in stock for some other works was used for printing the ballot papers on 12th February, 1967. But, it was accounted for on 18th August, 1967. He was not able to explain what Ext. X-22 (a), dated 21st August, 1967, relates to. Though R.W. 13 (Bhabananda Sarkar) passed a remark as per Ext. A-2376(a) that the out-turn was poor and the computer made a remark Ext. A-2376(b), that he checked the out-turn, the remark in Ext. A-2376, that 2,500 ballot papers were printed is clearly a mistake, because the ballot papers which were printed were numbered from 1,18,541 to 1,20,000.

23. The evidence of R.W. 13 (Bhabananda Sarkar) with regard to the re-numbering 900 ballot papers contained in Ext. B-42 is that the old numbers on 300 ballot papers were blocked and erased with type-quads and that 800 ballot papers were re-numbered as per Ext. A-2307 (a). On actual counting of the ballot papers in Ext. B-42, R.W. 13 (Bhabananda Sarkar) found that 253 were defaced and that 705 were defaced and re-numbered and that the rest were neither defaced nor re-numbered. His evidence is that he received information that the Election department received ballot papers from the Central Government Press, Calcutta and that, therefore, further defacing and renumbering were stopped.

24. Thus, a set of 1,400 ballot papers returned by the returning officer, Sonamura and 900 ballot papers which were marked in duplicate were received by R.W. 2 (N. G. Choudhury). Their total number was 2,300. But, Ext. B-42 contains two items of 985 plus 500=1,485. So, there is a balance of 815 ballot papers not accounted for. The ballot paper account for Polling Stations 6 to 8 in Ext. A-2334, shows that ballot papers with serial Nos. 1,18,541 to 1,20,060 were used. So, the ballot papers sent by the Calcutta Press were used. Also, the respondent's Counsel pointed out that the 29 ballot papers referred to by R.W. 2 were not used, as can be seen from Ext. B-48 in Ext. A-2312 ballot papers account. But, still there is no accounting for the 815 ballot papers. Besides this, it can be seen from a comparison of Exts. X-22 to X-24 and the ballot papers printed in Agartala Printing Press with Ext. X-25 model ballot paper, the design differs. As admitted by R.W. 13 (Bhabananda Sarkar) the design cannot be changed without the permission of the Election Commission. Vide also rule 30(1) of the Rules of 1961 which lays down that every ballot paper shall be in such form and the particulars therein shall be in such language or languages, as the Election Commission may direct. As such there was some bungling regarding the ballot papers and non-compliance with Rules 30(1) of the Rules of 1961.

25. Again, it may be seen from the ballot paper accounts Exts. A-2311 to A-2340 in respect of the various polling stations in the Parliamentary and Assembly Constituencies, the number of ballot papers, which were issued, does not tally with the number of the ballot papers found on the counting tables in several polling stations as stated by the petitioner P.W. 26, though there are some mistakes in the account furnished in para. 9B of the petition. It may be mentioned that there is discrepancy not only in the account relating to some stations in the Parliamentary Constituency but also in the account for the same polling stations relating to the Assembly Constituencies. The elections for the Parliamentary Constituency and the basic Assembly Constituencies were held at the same time. The evidence of R.W. 1 the respondent shows what procedure was followed. The voters who were within the compound were allowed to vote by standing in a queue. A voter had to go from table to table. The parties' agents gave slips to the voter mentioning his number in the voting list. Then a clerk within the polling booth verified his identity. One polling officer gave a mark with indelible ink on one of the thumbs or the fingers. The last polling officer gave the direction to the voter and also a seal. The voter would enter into the enclosure and put the seal on the candidate's election symbol. He would fold the papers and come out and put it in the ballot box before the presiding officer. Then he was given another ballot paper. He followed the same procedure. One had to enter into the booth one after another. So, votes were cast for both the Parliamentary and the Assembly Constituencies at the same time. But, yet some discrepancies are found in the ballot paper accounts. Ext. A-2320 shows that while

780 ballot papers were issued 776 were found on the counting table for the Parliamentary Constituency and while 778 ballot papers only were issued and 774 were found on the counting table for the Assembly Constituency in old Agartala, for polling station No. 19. In Charilam Parliamentary Constituency 574 ballot papers were issued while 573 ballot papers were found on the counting table. Vide polling station No. 19 in Ext. A-2322. There are similar discrepancies regarding the ballot paper account for polling stations 12, 13, 14, 15, 18, 19, 22 in Ext. A-2326 regarding Muhuripur Constituency. Exts. A-2316 and A-2315 show that there are discrepancies in the number of ballot papers issued and found on the counting tables for both the Parliamentary as well as Assembly Constituency for Agartala Sadar I. For example, in polling station No. 12, 336 ballot papers were issued while 833 were found for the Parliamentary Constituency and 835 ballot papers were issued and 834 were found on the Assembly Constituency counting table. In some cases there were excess ballot papers which could not be explained by the learned Counsel for the respondent. For example, in polling station 15 in Uttar Debendranagar Parliamentary Constituency while 817 ballot papers were issued 819 were found on the counting table for the Parliamentary Constituency. Vide polling station No. 15 in Ext. A-2318. Similarly in polling station 16 in old Agartala while 667 ballot papers were issued, 676 ballot papers were found on the counting table for the Parliamentary Constituency. Vide Ext. A-2320. For the same polling station there was excess of 10 ballot papers on the counting table for the Assembly Constituency also. Ext. A-2322 shows that while 593 ballot papers were issued 594 ballot papers were found on the counting table for polling station No. 15 in Charilam Parliamentary Constituency. Of course, the discrepancy in the accounts here and there is not abnormal. But, there was discrepancy.

26. In para 10A, the petitioner mentioned that a ballot paper bearing serial No. 296986 of polling station No. 10/20 of Charilam Constituency was found on the main road in Agartala town opposite to the Secretariat building, that it contained a seal upon the petitioner's election symbol and that it must have been removed from the ballot box. It was marked as Ext. A-2352 and it tallies with the model Ext. X-25 ballot paper. The evidence of P.W. 18 (Debendra Chandra Deb) is that he had cast his vote in the last election, that he came to his sister's residence in Joynagar, Agartala after the election was over, that on Monday when he was going to the Motor Stand by Akhaura Road after the counting was over, he saw Ext. A-2352 ballot paper lying in the street and that he picked it up and gave it to P.W. 26. It was elicited in his cross-examination that his house is adjacent to P.W. 26's father-in-law's house, that P.W. 26 the petitioner usually visits the house of the father-in-law of P.W. 18 (Debendra Chandra Deb) and that, therefore, he was known to him. He further stated that the wife of the petitioner P.W. 26 was also present in the Court when he was examined. He admitted that he was not summoned, that the petitioner's son asked him to attend the Court and that, therefore, he attended the Court. The fact that not only he but most of the other witnesses were not summoned is not a material fact in this case. The petitioner was detained under the Preventive Detention Act after he filed the election petition. So, he had no opportunity to summon the witnesses. Except a few witnesses, who were also detained under the Preventive Detention Act and who were Summoned from the Central Jail in Agartala, all the other witnesses attended the Court without summonses. Some of them stated that they were asked by the petitioner (before he was detained) to attend the Court. Some others stated that the petitioner's son requested them to attend the Court. P.W. 21 (G. Chakraborty) attended the Court, at the instances of the petitioner's daughter. As such, the fact that the witnesses attended the Court without summonses cannot be counted against them. But, the name of P.W. 18 (Debendra Chandra Deb) is found in the second list filed by the petitioner. It was elicited from P.W. 26 that in memorandum submitted by him to the President of India complaining of the last election, he mentioned some other ballot paper and not Ext. A-2352. The Respondent's Counsel stated that the ballot paper bearing serial No. 2,96,986 in polling station No. 10/20 of Charilam Constituency was one of the 4 ballot papers missing as can be seen from Ext. B.47. with reference to polling station No. 20 in Ext. A-2322. R.W. 1's evidence is that in some cases the voters might have taken away the ballot papers without putting them in the ballot boxes, when the presiding officers were unawares. But Ext. A-2352 bears the seal on the petitioner's election symbol. So, the person, who had put the seal on the petitioner's election symbol evidently cast his vote in his favour and it is unlikely that he would have gone away without putting the ballot paper in the ballot box. As such, it is not known how it came out of the ballot box and there is no explanation for its flying in the streets.



27. The petitioner made some more allegations in sub-para. B of para. 9 of his petition, about which there is no evidence. Though he mentioned that ballot box No. 1 in polling station No. 51 in Puran Agartala J. H. School was found empty Ext. A-2320, shows that there was no polling station No. 51 at all in that school. He alleged that two ballot boxes were found on the counting table, while three ballot boxes were used at polling station No. 12 in town Agartala Bidhan Sabha Constituency covered by Ext. A-2340. But, there is no evidence about it. Nor is there any evidence about his allegation that the ballot box in polling station No. 10 in Mohanpur Bidhan Sabha and that in the Craft Training Institute polling station in Sadar III Constituency did not bear seals. His further allegation that the ballot boxes used in polling station No. 3, 13, 19 and 22 in Ext. A-2336 in Bishalagarh were not wrapped up with sack cloth and sealed up is not borne out by any evidence.

28. In sub-para. C of para. 9, the petitioner alleged that there was no proper guard when the ballot boxes were sent to the headquarters. But, no particulars of the polling stations from which the ballot boxes were sent without guard were mentioned.

29. In sub-para. D of para. 8, he alleged that the United Front candidates were not allowed to lock up the doors and windows and put guard when the ballot boxes were brought to Agartala from Sadar Assembly Constituency. P.W. 19 (Atikul Islam), who was one of the candidates for Sadar Assembly Constituency set up by United Front, deposed that Shri S. R. Chakraborty, the S.D.M. And the returning officer did not permit him to put his seals on the doors and windows of the room in which the ballot boxes were kept. P.W. 19 (Atikul Islam) lodged a complaint Ext. A-2369, on 20th February, 1967. Though it is a typed petition, the words "might be tampered with" were written with hand in Ext. A-2369. It may be seen that this allegation refers to the Sadar Assembly Constituency and not to the Parliamentary Constituency, for which the District Magistrate was the returning officer. The petitioner himself did not file any petition.....

30. Sub-para. E of para. 9 comes under corrupt practices alleged in para. 7 and will be considered thereunder.

31. In sub-para. B of para. 10, the petitioner made a number of allegations about ballot boxes, about which he did not lead any evidence at all.

32. Thus, the petitioner has made out three allegations namely, firstly that 815 ballot papers were not accounted for, secondly that there was a discrepancy in the ballot paper accounts for many polling stations and, thirdly, that Ext. A-2352 ballot paper was removed from the ballot box. From these facts, the petitioner's Counsel argued that the ballot boxes must have been tampered with. From these facts alone it does not follow that the ballot boxes might have been tampered with. For, in almost all the polling stations where discrepancy in the accounts was found the petitioner secured more votes than the respondent. In the very polling station No. 20 Ext. A-2322 ballot paper account for Charilam shows that the petitioner secured 394 votes, while the respondent secured only 137 votes. In the other polling stations where there is discrepancy in the account the petitioner secured more votes than the respondent. He got 397 as against 187, 783 as against 82 and 489 as against 355 votes in polling stations 5, 14 and 18 as per Ext. A-2312. He got 204 as against 149, 330 as against 233, 708 as against 225 and 418 as against 370 in polling stations 10, 11, 12 and 20 as per Ext. A-2314. He got 392 as against 314, 517 as against 441, 254 as against 246 and 516 as against 300 in polling stations 5, 13, 15 and 20 of Ext. A-2316. He got 434 as against 152, 426 as against 256, 770 as against 23, 442 as against 122, 697 as against 20 and 553 as against 68 in polling stations 4, 7, 15, 19, 20 and 21 in Ext. A-2318. He got 492 as against 241 and 634 as against 51 in polling stations 19 and 20 as per Ext. A-2320. He got 533 as against 231 and 536 as against 11, in polling stations 2 and 19 as per Ext. A-2322. He got 310 as against 283, 467 as against 354 and 555 as against 280 in polling stations 14, 15 and 17 in Ext. A-2324. He got 190 as against 67 and 306 as against 277 in polling stations 6 and 10 as per Ext. A-2326. So, if there was tampering, then it is not probable that the petitioner would have got more votes than the respondent as per the alleged tampered ballot boxes. It was held in *Champa Devi Vs. Jamuna Prasad and others* (15 E.L.R. 443) page 16 of Digest of the Election Law Reports (Vol. II—1955 to 1960) that the fact that all the ballot papers which were issued to voters had not been accounted for, does not bring the case within the purview of section 100 (1)(d)(iii) of the Act, as it is possible that the voters who had taken them might not have made use of them. In *T. C. Basappa Vs. T. Nagappa and others* (3 E.L.R. 197) it was held that discovery of excess ballot papers in a ballot box is

no ground for setting aside the election of the returned candidate. In *Govind Malviya Vs. Murli Manohar and others* (8 E.L.R.84) some ballot papers which were not genuine were found in the ballot box of the respondent. There was no evidence to show who put them in the ballot box. It was held that their presence did not prove any corrupt practice under sub-section (3) or (8) of section 123 of the Act of 1951 (as it then stood) on the part of the respondent. But that the case was one which was covered by rule 47 of the Representation of the People Rules, 1951 and that the Returning Officer should have rejected the ballot papers as spurious ballot papers under that rule. In *Shanta Devi Vaidya Vs. Bashir Husain Zaidi and others* (8 E.L.R. 300) it was held that even if it is proved that the ballot boxes were defective and were such that they could be tampered with and that there were irregularities in conducting the election, it cannot be set aside under the Indian law unless it is proved further that the result of the election had been—not merely might have been—materially affected by the said defect or irregularity. Vide also *Jang Bahadur Singh Vs. Basant Lal and others* (8 E.L.R. 429) and *Ganga Prasad Shastri Vs. Panna Lal and others* (8 E.L.R. 444) to the same effect. In *Shah Umair Sahib Vs. Ramacharan Singh and others* (10 E.L.R. 162) it was held that mere fact that the outer seals of some ballot boxes were missing or broken did not raise an inference or even a presumption of "tampering", but that it must be proved as a fact. It was further held that to constitute "tampering" it is not necessary to prove that the ballot papers were taken out, added to or destroyed and that actual meddling with the boxes is enough. In the present case, there is no evidence that the seals of the ballot boxes were broken or tampered with, when they were brought out, before the ballot papers were counted. Mere suspicion and conjecture are not enough.

33. Regarding Ext. A-2352, the contention of the learned Counsel for the petitioner is that the secrecy of voting under for the petitioner is that the secrecy of voting under sections 94 and 128 of the Act was violated, that taking away of a ballot paper even by a voter is a cognizable offence under section 135 of the Act and that, therefore, the election of the respondent is liable to be set aside. But, as can be seen from paragraph 679 at page 468 of the Law of Election, and Election Petitions Volume I and II by H. S. Doabia, 1967, Edition, Committing an offence under the rules is not non-compliance with the rules within the meaning of section 100(1)(d)(iv) of the Act.

34. Assuming that there was irregularity with regard to the ballot papers and the conduct of the election, then the petitioner can succeed only if he can prove that the election of the respondent was materially affected due to non-compliance with the provisions of the Act and the Rules under section 100(1)(d)(iv) of the Act. This is the only provision under which this aspect of the case falls. The word "non-compliance" in section 100(1)(d)(iv), of the Act denotes an omission to do what is directed to be done and does not denote doing of an act which is prohibited. Vide also *Naunihal Singh Vs. Kishorilal Paliwal* (A.I.R. 1961 M.P. 84) followed in *Madhu Singh Mukh Ram Vs. Ram Saran Chand Mittal and others* (A.I.R. 1966 Punjab 66). Section 100(1)(d)(iv) of the Act requires the petitioner to prove that the election of the respondent was materially affected on account of the non-compliance with the provisions of the Act and Rules. This requirement is, no doubt, onerous but has to be discharged. In *Vashist Narain Sharma Vs. Dev Chandra and others* (A.I.R. 1954 S.C. 513), the Supreme Court laid down that the words "the result of the election has been materially affected" indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate. It was further held that this is a matter which has to be proved and that the onus of proving it lies upon the petitioner. There cannot be a conjectural finding that the result of the election was materially affected. In *Pethu Reddiar Vs. V. A. Muthia and another* (A.I.R. 1963 Madras 390) it was held that illegality or irregularity in an election or in the process of counting of votes is a matter for proof and that nothing can be done on the basis of mere suspicion. Vide also *Rikhab Dass Vs. Riddhichand Paliwal and others* (9 E.L.R. 115) and *Vashist Narain Sharma Vs. Dev Chand and others* (10 E.L.R. 30) the rulings cited at pages 286 and 287 of volume II of Digest of the Election Law Reports 1955-60, *Sudhir Kumar Mondal Vs. Abhoy Pada Saha* (A.I.R. 1966 Calcutta 141) and *Hariransingh Vs. Kamtaprasad Sharma* (A.I.R. 1966 M.P. 255) (relied on by the respondent's Counsel). In the present case there is a margin of 33,822 votes by which the respondent succeeded. The petitioner has to show how the balance would have been tilted in his favour, if there was no non-compliance with the provisions of the Act, the Rules and orders thereunder. He has been able to

show that there is discrepancy in the account of the ballot papers only up to one or two thousands. There is no proof that the respondent's election was materially affected on account of the non-compliance with the provisions of the Act and the Rules and orders thereunder with reference to the ballot papers.

35. I find on issue (ix) that the result of the election of the respondents was not materially affected by non-compliance with the provisions of section 100(1)(d) (iv) of the Act so far as regards the ballot papers are concerned. I find issue (x) in the affirmative. I find on issue (xi) that there was discrepancy between the number of ballot papers used or issued and number of ballot papers found for counting, but that the discrepancy did not materially affect the result of the respondent's election.

36. *Issues (VIII), (XII) and (XIV):—*

These issues are connected. Before discussing the evidence relating to these issues, it will be convenient to refer to the circumstances under which both the parties contested the election to the Lok Sabha from the Tripura West Parliamentary Constituency. The father of the petitioner P.W. 26 was an Advocate of the local Bar. The petitioner is a Bengalee. His fore-fathers belonged to Charges in East Pakistan about 100 years back. His father and brothers came away to Agartala. He was born in Tripura. He passed I.A. Examination in Comilla Victoria College which is now in East Pakistan. He belongs to the Communist Party (Marxist). In 1931, one Mr. Elison was murdered. P.W. 26 was arrested in 1933 and he does not remember whether he was arrested in connection with Mr. Elison's murder. After he was released from prison, he came away to Agartala. He was considered to be indulging in anti-state activities, as he was opposed to the regime of the then monarch of Tripura. In 1940, he was arrested for disobeying an externment order in Tripura and he was tried and sentenced to undergo rigorous imprisonment. He fought for the freedom of the people of Tripura. He joined the C.P.I. in Hizli Detention Camp. He was transferred from Agartala to Maimensingh Jail (which is now in East Pakistan) in 1942. Again after his release, he came over to Agartala. He associated himself with the C.P.I. group in Agartala. He published a newspaper called *Tripura Rajyer Katha*. He was the sponsor of Tripura Rajya Praja Mandal. He was detained in Gauhati Central Jail and shifted to other jails in Assam from 1948 to 1951. He was associated with Ganatantrik Sangha started by his Advocate Shri B. C. Dev Barma. He started a Weekly Organ by name *Tripura Katha*. In 1957, he contested for a seat in Lok Sabha on C.P.I. ticket, but he did not succeed. In the first general election when there was only a single member Constituency, he was elected to the Lok Sabha. He was elected in 1962 from the same Tripura West Constituency to the Lok Sabha.

37. The respondent R.W. 1 is also a Bengalee and is an Honours Graduate of the Oxford University and a Master of Arts and a Law Graduate of the Calcutta University. He is a member of the local Bar. In 1920, he was a professor in Mahashin College in Hooghly. After he served in that College for about 6 months, he joined another Government College by name Murarichand College in Sylhet in Assam. He worked there upto 1947. When he was asked to opt for the rest of India or Pakistan, he opted for the rest of India. The Government of Assam granted him proportionate pension with effect from 1st April, 1948. After the partition, he was compulsorily retired. He was one of the agitators for forming a non Assamees speaking State comprising Cachar, Tripura, Mizo Hills, Manipur and Nagaland. He denied the suggestion that Assam Government wanted to get rid of him on account of his agitation for forming a non-Assam speaking State. He filed a suit against the Government of Tripura and the Government of India against the order for compulsory retirement and succeeded. From 1920 to about 1943 he was in Government service with a break of few months in the beginning. His promotion was stopped for about 20 years by European Principals, as he was connected with Gandhian constructive programme. He worked as Principal in Sylhet from 1946 to 1947. He worked as Principal of the M.B.B. College in Agartala from 1948 to 1954. He worked as the Principal in the G.C. College in Silchar from 1954 to 1959. Again, he worked as Principal in Cachar College in Silchar from 1960 to 1964. So, he is popularly called as Principal. After retirement, he was coaching up students in his house in Agartala for M.A. Examination. For the first time, he contested for a seat in the Lok Sabha in 1957 as an independent candidate. But, he forfeited his deposit.

38. R.W. 1 narrates the circumstances under which he joined the politics in 1967. When he was engaged in tuitions in 1966 politics in Tripura was rather in disarray. The communists were divided into leftist and rightist, after the Chinese

aggression in 1962. The Congress was also divided with Shri Sukhomoy Sen Gupta, a powerful ex-member of the Congress and ex-Minister, having resigned his post as Minister. The other parties were virtually non-existent. In the month of June or July, 1967, on one day Shri Sukhomoy Sen Gupta met R.W. 1 in his house and told him about the split in the Congress and his resignation. He told R.W. 1 that he had been on a tour almost throughout Tripura and sounded people how it would work to have a Gandhian branch of the Congress. R.W. 1 informed him that he had bitter experience in 1957, as he was let down and that he was reluctant to accept his offer. On or about 7th September, 1966, a conference was called by 8 persons excluding Shri Sukhomoy Sen Gupta in Rairbazar. Shri Sukhomoy Sen Gupta persuaded R.W. 1 to tell the persons in the gathering about Gandhian principles. R.W. 1 agreed and attended the conference. Shri Sukhomoy Sen Gupta presided over the meeting and was made the Convenor. After some days, 6 out of 8 persons approached R.W. 1 and told him that Shri Sukhomoy Sen Gupta who proposed to frame the rules and promised to form the committee, did not do so though there was a resolution and asked R.W. 1 to intervene. Then R.W. 1 went to Shri Sukhomoy Sen Gupta's house. From the conversation with him, R.W. 1 could gather that Shri Sukhomoy Sen Gupta wanted to be only a convenor and run the organisation. Shri Sukhomoy Sen Gupta subsequently met R.W. 1 when those 6 persons revolted against him and when they requested R.W. 1 to be the president of the Tripura Congress. R.W. 1 understood that Shri Sukhomoy Sen Gupta wanted to have an independent congress organisation. At that time, the petitioner and others, who were in the jail, were released. The petitioner P.W. 26 also approached R.W. 1 and told him that as the communist party also was losing ground from election to election and as Shri Sukhomoy Sen Gupta, the enemy of the communist party, was divided from the congress, they should all form United Front and that R.W. 1 should be its leader and stand from the town Constituency R.W. 1 told P.W. 26 also that he had bitter experience in 1957 and refused to stand for the election. In the meanwhile, the congress was also sending its emissaries to him for about one month and R.W. 1 refused to accept their suggestions. He suddenly became important and could see what was what and what was working in what way and for what purpose. Finally, P.W. 26 went to him with Shri Dasaratha Dev Barma and R.W. 1 refused to join their alliance. R.W. 1 issued Ext. A-2377 pamphlet explaining his position *vis-a-vis* Shri Sukhomoy Sen Gupta and others. Towards the end of November, 1966 at about 10 P.M. Shri S. L. Singh suddenly called on him and asked him why he refused the congress ticket for the Lok Sabha, being a follower of Mahatma Gandhi and wearing Khadi dress. R.W. 1 replied that the extent to which the congress deviated in practice from Gandhian principles was also the extent to which he deviated from the congress of today. Then, Shri S. L. Singh explained to him certain drawbacks in the Administration on account of practical difficulties. R.W. 1 suggested that the Administration should be streamlined. He also told him about the incident of shooting of students, some deaths in the shooting and about the wounded persons whom he saw in the hospital in an incident which happened in those days. R.W. 1 further informed Shri S. L. Singh that he must be permitted to retain his freedom of conscience. Shri S. L. Singh agreed that he would do his best with regard to the above matters. As Congress was formed by Mahatma Gandhi, R.W. 1 at last agreed to accept the Congress ticket. Shri S. L. Singh told him that Tripura local congress and the A.I.C.C. should give their acceptance. The local Congress informed R.W. 1 that the A.I.C.C. accepted his candidature on 23rd December, 1966. Then R.W. 1 commenced canvassing for votes from January, 1967 onwards.

39. The petitioner pleads innumerable instances of corrupt practices, said to have been indulged in by the respondent or his election agent R.W. 7 or by his agents in his interest or by others with his consent for the furtherance of the prospect of his election. Trial in an election petition is a quasi-criminal trial. The charges of corrupt practices, if proved, entail double penal consequences. Not only does the returned candidate lose his seat but he is debarred from standing again for the election. So, there should be clear, precise and cogent proof to bring home the charges. *Vide R. Narasimha Reddy and another Vs. Bhoomaji and another* (A.I.R. 1959 A.P. 111), *Mohan Singh Vs. Bhanwarilal and others* (A.I.R. 1964 S.C. 1366), *Jaddev Singh Sidhanti Vs. Pratap Singh Daulta and others* (A.I.R. 1965 S.C. 183), *Kondaveti Gurunath Reddy Vs. V. Seshiah and others* (A.I.R. 1966 A.P. 3331), *Hariramsingh Vs. Kamtaprasad Sharma* (A.I.R. 1966 M.P. 255), *Dr. Jagjit Singh Vs. Giani Kartar Singh and others* (A.I.R. 1966 S.C. 773), *Puduh Venkatanarayana Vs. G. V. Sudhakar Rao and others* (A.I.R. 1967 A.P. 111) and *Chandalavada Subha Rao Vs. Kasu Brahmanada Reddy and others* (A.I.R. 1967 A.P. 155). The onus is always on the petitioner to establish the

commission of corrupt practice beyond all reasonable doubt. The corrupt practices should be proved in the same manner as criminal offences. The benefit of doubt will go to the successful candidate against whom the charges of corrupt practices are made. Vide pages 479 and 480 of Doabia's Law of Elections and Election Petitions, Vol I and II, 1967 Edition. The respondent is not to prove facts especially within his knowledge. So far as the proof of corrupt practices under the Act is concerned, section 106 of the Evidence Act is not applicable. The burden of proof cannot be thrown on the successful candidate on the ground that the facts are especially within his knowledge. Vide page 53 of volume II of the Digest of the Election Law Reports 1955-60. Circumstantial evidence must not only be full and cogent but also should be of conclusive nature as to exclude to moral certainty and any other hypothesis, on which it could be explained, by the one proposed to be proved. Vide *Hanumant Govind Vs. State Madhya Pradesh* (A.I.R. 1952 S.C. 343) followed in *Chadalavada Subha Rao Vs. Kasu Brahmananda Reddy and others* (A.I.R. 1967 A.P. 155).

40. Section 100, which lays down the grounds on which an election may be declared to be void, runs as follows:—

“(1) Subject to the provisions of sub-section (2) if the Tribunal is of opinion—

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act; or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
  - (i) by the improper acceptance of any nomination, or
  - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
  - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
  - (iv) by any non compliance with the provisions of the Constitution or of this Act or if any rules or orders made under this Act, the Tribunal shall declare the election of the returned candidate to be void.

(2) if in the opinion of the Tribunal a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the Tribunal is satisfied—

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

\* \* \* \* \*

- (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election and;
- (d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agent, then the Tribunal may decide that the election of the returned candidate is not void.

41. Section 123 relates to corrupt practices. The categories under which the petitioner wants to bring the various items under section 123 are section 123 (1) (A), (2), (3), (3A), (4), (5), and (7). Section 123 runs as follows:—

"The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) "Bribery", that is to say,—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly or inducing—

(a) a person to stand or not to stand as, or to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an or as a reward to—

(i) a person for having so stood or not stood, or for having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw his candidature.

*Explanation.*—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of employment for reward but it does not include the payment of any expenses bonafide incurred at, or for the purpose, of any election and duly entered in the account of election expenses referred to in section 78.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent with the free exercise of any electoral right;

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector with the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause;

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race,

caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

(4) The publication by a candidate or his agent or by any other person, with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidates' election.

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, for the conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

*Explanation.*—In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) The incurring or authorizing of expenditure in contravention of section 77.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:—

- (a) gazetted officers;
- (b) stipendiary judges and magistrates;
- (c) members of the armed forces of the Union;
- (d) members of the police forces;
- (e) excise officers;
- (f) revenue officers other than village revenue officers known as lambar-dars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and
- (g) such other class or persons in the service of the Government as may be prescribed;

*Explanation.*—(1) In this section the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

- (2) For the purposes of clause (1), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent, or a polling agent or a counting agent of that candidate."

As a candidate is made liable for the acts of his agents or by any other person with his consent or his election agent in certain circumstances, it becomes necessary to understand the correct implication of agency and consent. Chapter II

in Part II of the Act refers to the appointment of election agents, polling agents and counting agents specifically. According to English Law, a candidate's liability to have his election avoided under the doctrines of election agency is distinct from, and wider than his liability under the criminal or civil law of agency. Once the agency is established a candidate is liable to have his election avoided for corrupt or illegal practices committed by his agents, even though the act was not authorised by the candidate or was expressly forbidden. The reason for this stringent law is that candidates put forward agents to act for them. If it were permitted that these agents should play foul, and that the candidate should have all the benefit of their foul play without being responsible for it in the way of losing his seat, great mischief would arise. The relationship between candidate and agent resembles that of master and servant. The crucial test is whether there has been employment or authorisation of the agent by the candidate to do some election work or the adoption of his work when done. In the absence of authorisation or—ratification the candidate must be proved to have either by himself or his acknowledged agents employed the agent to act on his behalf, or to have to some extent put himself in the hands of the agent, or to have made common measure with him for the purpose of promoting the candidate's election. *Vide* paragraphs 300 and 301 at pages 169 and 170 of Volume 14 of Halsbury's Law of England, Third Edition. In Indian Law the candidate is bound by the action of his agents and also by the action of others done with his consent or of his election agent in some circumstances. *Vide* the Commentary at page 152 and 153 of the Law of Elections and Election petitions, Volumes I and II of Doabia, *In T. C. Basappa Vs. Nagappa and others* (3E. L. R. 197) it was held that the word "agent" in election law has a wide significance, that no authorisation or—declaration in writing is necessary and that the fact of agency may be established by circumstances arising out of the general features of the case, the conduct and connection of the parties, and the subsequent recognition of the acts of the supposed agent or at least an absence of disavowal of such acts. It was also held that the doctrine of agency is carried by election law much farther than in civil and criminal cases. To the same effect in *Sardul Singh Caveeshar Vs. Hukam Singh & others* (6E. L. R. 316). It was held that newspapers, which made special propaganda for the election of a particular candidate, can be treated as his agents for the purpose of Election Law. *Vide Abdul Jalil Choudhury Vs. Rathindra Nath Sen* (A.I.R. 1958 Assam 51). The liability of a candidate for a publication was considered. This was followed in *Nani Gopal Swami Vs. Abdul Hamid Choudhury and another* (A.I.R. 1959 Assam 200). It was held that, for the purposes of the Act, the expression "agent" has a much wider connotation than it is ordinarily understood to have under the law of contract, that anybody, who acts in furtherance of the prospects of the candidate's election may be said to be an agent of the candidate concerned, provided he does so with the consent of the candidate, but that the expression "consent" may not be necessarily an express consent, that no written document is necessary and that it may be gathered and implied from the circumstances of the case. It was further held that the word "agent" under the Act includes not only a person, who has been specifically engaged by the candidate or his election agent to work for him in the election, but also a person, who does in fact work for him and whose services have been accepted by the candidate, that thus an association of persons or a society or a political party and its prominent members, who set up the candidate, sponsor his cause and work to promote his election, may be aptly called the "agent" of the candidate for his action, even though the person may have acted for the candidate's benefit person concerned was merely an officious intermeddler in the election or a mere volunteer then of course the candidate cannot be said to have any responsibility for this action, even though the person may have acted for the candidate's benefit and with a view to advance his interest in the election. In *Maganlal Radhakrishnan Bagdi Vs. Hari Vishnu Kammath* (A.I.R. 1960 M.P. 362) it was held that where the election campaign, publicity and propaganda of a party's candidates for election to the State Assembly as well as to the House of the People are conducted conjointly, the Assembly candidates are in fact and law the agents of the candidates for the House of the People and vice versa, within the meaning of section 123(4) of the Act. *Sudhir Laxman Hendre Vs. Shripat Amrit Dange and others* (A.I.R. 1960 Bombay 249) also explains the true legal position of an agent in elections. It was held that the word "agency" in elections means that the relation is not the common law one of principal and agent, but that the candidate may be responsible for the act of one acting on his behalf, though such acts are beyond the scope of the authority given or indeed in violation of express injunction. It was held that a



person, who is a member of the candidate's election committee, is his agent. In *Inder Lal Vs. Lal Singh* (A.I.R. 1961 Rajasthan 122) the Rajasthan High Court held that an association of persons or a society or a political party and its prominent members, who set up the candidate, sponsor his cause and work to promote his election may be aptly called the "agent" of the candidate for election purposes.

42. As against the above rulings the respondent's Counsel contended that the rulings in *Nani Gopal Swami Vs. Abdul Hamid Choudhury* and another (A.I.R. 1959 Assam 200) and *Inder Lal Vs. Lal Singh* (A.I.R. 1961 Rajasthan 122) were dismissed from in *Dina Nath Kaul Nadim Vs. (A.I.R. 1961 Rajasthan 122)* were dissented from in *Dina Nath Kaul Nadim Vs. Peer Mubarak Shah* (A.I.R. 1962 Jammu and Kashmir 28) which relied on *Raj Krushna Bose Vs. Binod Kanungo* (A.I.R. 1964 S.C. 202) and *Baru Ram Vs. Prasanni* (A.I.R. 1950 S.C. 93). It was held that where a candidate is sponsored by a body of persons, then the members of that particular body, who are canvassing for the candidate, cannot be deemed to be his agents within the meaning of Explanation (1) to section 123(7) of the Act, that the word "consent" in Explanation (1) implies not mere passive support to what persons interested in the candidate may do, but that it requires that there was some sort of assent given by the candidate to those acts. It was held that even non-interference with the activities of those persons who may be acting and canvassing for the candidate without something more should not be sufficient to make them agents and make the candidate guilty of corrupt practice as contemplated by section 123 c'ause (7) of the old Act. In *Krishanaji Bhimrao Antrolikar Vs. Shankar Shantaram More and others* (7 E.L.R. 100) it was held that even though the term "agent" has a much wider signification in election law than in the law of agency, the Secretary of the Election Propaganda Committee of a party, who publishes leaflets and posters in his capacity as such Secretary, cannot be deemed to have done such act as the agent of the candidate set up the party, unless there is evidence to show that the act was done with the knowledge, consent or connivance of the candidate. In *Nyalchand Virchand Sheth Vs. Election Tribunal Ahmedabad and others* (8 E.L.R. 417) it was held that it is the duty of the Election Tribunal to consider whether a candidate had knowledge of the Propaganda made by the President of the Congress Propaganda Board or had ratified his acts or whether on the facts the President could be considered to be an agent of the candidate. In *Rajendra Prasad Yadav Vs. Suresh Chandra Mishra* (11 E.L.R. 222) it was held that in certain circumstances a political party which sets up a candidate may be deemed to be his agent and the candidate may be held responsible for the corrupt practices committed by the workers of the said political party. In such cases however, the crucial test is whether there had been an employment or—authorization of the agent by the candidate to do some election work or the adoption of his work when done. At pages 58, 59, 63 65, 66 and 67 of Volume II of Digest of the Election Law Reports (1955—1966) a number of cases on the subject are found. In *Shri Gurbanta Singh Vs. Piara Ram Jagou Ram and others* (A.I.R. 1960 Punjab 614) it was held that there must be some further evidence, apart from the mere fact that the two candidates set up by one political party enjoin mutual assistance to show that each is the agent of the other. The decision in *Baru Ram Vs. Prasanni* (A.I.R. 1959 S.C. 93) relates to the appointment of polling agent. It was held that there must be evidence to prove that a candidate appointed a person as his polling agent and that the latter person acted as such polling agent for him. So, this decision has no bearing on this question in issue. In *Lalsing Kesharsingh Rehvar Vs. Vallabhdas Shankarlal Thekdi and others* (A.I.R. 1967 Gujarat 62) it was held that the term "agent" has not the same connotation as that term has in the law of contract and that the question to be noted is whether a person is or is not an agent of a candidate in the field of election.

43. As all the Courts agree that the term "agent" has a wider connotation in the Election Law, whether the candidate is bound by the action of another candidate set up by the same party or by the action of the party which has set him up or by the action of others is a question of fact which has to be determined in this case with reference to the evidence, facts and circumstances. The respondent was selected by Shri S. L. Singh, the then Congress Chief and was set up by the Pradesh Congress organisation. They and the Congress workers worked for him. They were all his agents and he is bound by their actions and propaganda according to the circumstances of the case. He is also bound by the actions of others done in his interests and to further the prospects of his election, provided of course, there is proof that he adopted their action

or gave his consent to their actions. In this—connection it may be mentioned that R.W. 1 admitted in his cross examination that his success in the last election was due to Shri S. L. Singh as the latter introduced the respondent to the audience in the public meetings. But, he added that he was not himself a cypher. In the election in 1957, when he stood as an independent candidate, he however forfeited his deposit. So, the evidence has to be examined in the light of the facts and circumstances which prevailed on the eve of the election.

44. The evidence regarding the various items of corrupt practices will now be considered.

45. *Supplementary voters' list.*—The petitioner alleges in paragraph 7B of his petition that in preparing the voters' lists while *bona fide* Indian citizens and tribals in particular were excluded, though they duly applied for inclusion, thousands of new refugees, who did not hold any citizenship certificates, got their names enlisted. P.Ws. 1 (Benu Sen Gupta) and 26 the petitioner are the witnesses who speak to this aspect of the case. Exts. A-20 to A-2257 are the petitions filed by the residents of Bishalgarh Constituency. They were all disposed of by Shri S. R. Chakraborty, the then Electoral Registration Officer on 15th October, 1966. Exts. A-2258 to A-2269 are application forms without stamps. Ext. A-2341 is a bundle of 2809 applications of persons for enrolment as voters in Charilam Constituency. Ext. A-2342 is a bundle of 2353 applications of persons for enrolment as voters in Takarjala Constituency. Ext. A-2343 is a bundle of 1480 applications of persons for enrolment as voters in Agartala Sadar I Constituency. Ext. A-2244 is a bundle of 1203 applications for enrolment of persons as voters in old, Agartala Constituency. Ext. A-2345 is a bundle of 1254 applications of persons for enrolment as voters in Charilam Constituency. Ext. A-2346 is a bundle of 569 applications of persons for enrolment as voters in Agartala Town Constituency. Ext. A-2347 is a bundle of 2474 applications of persons for enrolment as voters in Agartala Sadar III—Constituency. Ext. A-2348 is a bundle of 1934 applications for enrolment of persons as voters for Agartala Sadar II Constituency. Ext. A-2349 is a bundle of 230 applications for enrolment of persons as voters in Charilam Constituency. Ext. 2350 is a bundle of 781 applications of persons for enrolment as voters in Uttar Debendranagar Constituency. Ext. A-2351 is a bundle of 3353 applications of persons for enrolment as voters in Mohanpur Constituency. Ext. 2370 is a bundle of 2631 applications from the persons of Sonamura South Constituency. Ext. A-2371 is a bundle of 236 applications from the persons of Salgarh Constituency. Ext. A-2372 is a bundle of 1560 applications from the persons of Belonia Constituency. Ext. A-2373 is a bundle of 2679 applications from the voters of Muhuripur Constituency. Ext. A-2374 is a bundle of 4595 applications from the voters of Sonamura North Constituency. Thus, on the whole about 32,513 voters were enlisted from September to 12th December, 1967. All the applications bear a note "accepted" as can be seen from Ext. A-2342 (a), A-2343 (a), A-2344 (a), A-2345 (a), A-2346 (a), A-2347 (a), A-2348 (a), A-2349 (a), A-2350 (a) and A-2351 (a). There are similar remarks on the applications in the other bundles also. They were disposed of by Shri S. R. Chakraborty and another Electoral officer from September to 12th December, 1967. The claim petitions are all in the form No. 6 presented for registration by the Registration of Electoral Rules of 1960. According to rule 26 of the said Rules, the Electoral officers registered the names of the supplementary voters as they were satisfied that the applicants were entitled to be registered in the rolls. So, they appear to have made only one endorsement as "accepted". Reasons are to be furnished by them under rule 26(4) proviso only when they reject the applications. Appeals lie under rule 27 to the Chief Electoral Officer against the order of the Registration officers passed under rule 26. After the list was published, it becomes final. It cannot now be questioned in any Civil Court as can be seen from section 30 of the Representation of the People Act of 1950. This Court acts as a Civil Court within the meaning of section 87 of the Act in dealing with the present election petition. So, this question cannot be agitated in the present election petition.

46. P.W. 1 (Benu Sen Gupta), the election agent of P.W. 26 admitted that most of the voters were enrolled at the instance of the United Front and that neither P.W. 1 (Benu Sen Gupta) nor P.W. 26 the petitioner raised any objection to their enrolment. According to P.W. 26, one Shri Aghore Dev Barma filed written objection to the inclusion of supplementary voters in the list though P.W. 26 himself did not file any written objection. But, the written objection, said to have been filed by Shri Aghore Dev Barma was not sent for. P.W. 26 could

not state the name of the supplementary voter who was enlisted contrary to the rules. No bonafide tribals or any other citizens, whose applications were said to have been rejected, were examined.

47. Over and above the points discussed above, it may be noted that the validity or otherwise of a supplementary voters' list or even original voter's list is no ground of attack under section 100 of the Act. Section 100(1)(d)(iv) itself clearly shows that the non-compliance with the provisions of the Constitutions or of the Act should be with reference to the Representation of the People Act of 1951 or of any rules or orders made under it. No authority is necessary for this proposition. The petitioner's Counsel agreed that he could not raise this question as a ground in the present election petition and did not press the point.

48. *Delimitation of Sadar II Assembly Constituency.*—The petitioner alleges in sub-para B of para 7 of his petition that the office of the Chief Electoral Officer acted in a partisan way in favour of the Ruling Congress party and the Congress candidates including their respondent, that the Sadar II Assembly Constituency was delimited after the submission of nomination papers to create advantages for Shri S. L. Singh the Chief Minister who stood as Congress party candidate from that Constituency and that almost all the polling stations were fixed up without consulting the recognised political parties. P.W. 1 (Benu Sen Gupta), 6 (Saraj Chanda) and 26 (Birendra Chandra Dutta) are the witnesses who speak to the delimitation of the Sadar II Assembly Constituency. Delimitation was taken up at the instance of Shri Umesh Lal Singh, a Congress candidate of Bishalgarh Constituency. Ext. A-2279 is the application filed by Shri Umesh Lal Singh to the Chairman, Delimitation Committee, New Delhi for making the changes as suggested by him. Exts. A-2270 to A-2278 and A-2280 to A-2287 relate to the correspondence, notifications on the subject etc., P.W. (Benu Sen Gupta) stated in the cross-examination that it was the duty of the Delimitation Committee to adjust, on the basis of the latest Census figures, the division of each constituency in the Union Territory of Tripura into Parliamentary Constituency. He admitted that, after his party submitted objections to the delimitation, the commission made proposal for delimitation of the Constituency and that Shri Umesh Lal Singh was an associate member of the Delimitation Commission. According to P.W. 6 (Saraj Chanda), who is the Secretary of the C.P.I. and who was a candidate from Agartala Sadar II Assembly Constituency, the first delimitation took place on 22nd June, 1966 as can be seen from Ext. A-2282. The next delimitation took place on 7th January, 1967 as can be seen from Ext. A-2270. The delimitation was published in Tripura Gazette dated 12th January, 1967 as can be seen from Ext. A-2272. His evidence is that he canvassed for votes for him as well as the petitioner that when the voters were ready to vote for them, the Assembly Sadar II Constituency was delimited within a few days prior to the election, that most of the voters with whom he canvassed were asked to vote in Sadar III Assembly Constituency and that they were in a confusion. In the cross-examination, he admitted that he did not file any petition objecting to the delimitation of the Constituency and that no voter told him that he was affected by the delimitation—P.W. 26 (Birendra Chandra Dutta) explained that he was also a sitting member of the Parliament and as such an associate member of the Delimitation Committee from Tripura, but that he had no prior information about the delimitation, that he came to know about this only at the time of the distribution of the voters' slips, that, as regards the delimitation covered by Ext. A-2282, he had previous information and that he submitted his objection to it before it was finalized. He further explained that in Sadar II Assembly Constituency he and his agents and the other candidates popularised their election symbol, but that suddenly when some portions of Sadar II were tacked on to Sadar III, there was confusion, that in Sadar II their supporters had to cast their votes in favour of one symbol namely, hammer, sickle and star, but that in Sadar III there were different symbols for Assembly Constituency on account of delimitation and that there was confusion among their supporters. In the cross-examination, he stated that he popularised his election symbol while advancing his policies and that he could not mention the names of those persons, whom he could not approach on account of delimitation. He stated that he did not remember whether he sent any objection to the delimitation after he saw it in the Gazette. Article 327 of the Constitution of India provides that the Parliament may, from time to time, by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation

of constituencies and all other matters necessary for securing the due constitution of such House or Houses. The Parliament enacted the Delimitation Commissions Act of 1962 in pursuance of the powers given to it by Article 327 of the Constitution. Section 10 of the Act shows that objection can be entertained only before the date specified under section 9(2) that, after the publication of the order in the Gazette, no objection can be raised and that the matter can no longer be reagitated in a Court of law. This is also covered by the latest decision of the Supreme Court in *Meghraj Kothari Vs Delimitation Commission and others* (A.I.R. 1967 S.C. 669) which is to the above fact. So, it is not now open to the petitioner to agitate in this election petition matters relating to delimitation of Sadar II - Assembly Constituency. The petitioner's Council conceded this position and did not advance any argument in support of the petitioner's allegations made in the election petition.

49. *Test relief Flood relief, Tube wells and Ring wells*—In paragraph 7 (a) (i) of the election petition, the petitioner alleges that the money sanctioned by the Central Government for test relief and flood relief about 6 months prior to the election was withheld till about a fortnight before the election, that the Tripura Government then ruled by the Congress party used the money within a fortnight prior to the election to construct roads, bridges, embankments, tube-wells, etc. to create an impression in the minds of the electorate favourable to the Congress and to influence the voters to make them vote in favour of the Congress. Particulars were mentioned about construction of roads, bridges, embankments, tube-wells in pages 1 to 8 of the schedule filled on 13th November, 1967. The particulars are the same as those given by the Government in the Tripura Legislative Assembly in answer to questions put in the Assembly as per Exts. A-1(a), A-1(b), A-1(c), A-2(a) and A-2(b). Ext. A-1(a) refers to the work done and the amount spent in Bishalgarh block for road construction. Exts. A-1(b) and A-1(c), refer to the construction of tube-wells and R.C.C. wells in Sadar and in other divisions. Ext. A-2(a) relates to construction of roads, bridges, embankments etc. in the Sadar division. Ext. A-2(b) relates to test relief works in Dharmanagar, Kallashahar, Sadar and others places in January and February, 1967. P.Ws. 1 (Benu Sen Gupta), 6 (Saroj Chand), 21 (Gopal Chandra Chakraborty) 23 (Haran Chandra Choudhury) and 26 (Birendra Chandra Datta) are the witnesses who speak to the construction of roads etc. under test relief work and construction of tube-wells, etc. Their evidence goes to show that the Tripura Government spent a lakh of money in January and February, 1967, on the eve of election. It is also their evidence that the test relief work is intended to be done in the lean months of May, June and July, but that the work was done in January and February, 1967 to influence the voters and to make them vote in favour of the Congress candidates, as the then Government was run by the Congress Ruling Party. No doubt, P.W. 1 (Benu Sen Gupta) gave evidence with reference to Assembly proceedings and has no personal knowledge about the constructions. P.W. 6 (Saroj Chandra) spoke to the construction of roads in Gajaria, Belabar, Pratapgarh, Arundhutinagar, Badharghat, Bhattapukur, Kalkapur and Rampur and deposed that, though it was difficult for him to reach the village as there were no good roads, all of a sudden he found several roads being laid simultaneously about one month prior to the election leading to the villages and that he was told that the works were started under the Test Relief Scheme. He deposed that in some cases the works were personally supervised by Shri A. K. Sen, the Principal Engineer. He never saw Shri A. K. Sen the Principal Engineer previously inspecting the works at any time. P.W. 21 (Gopal Chandra Chakraborty) deposed that he found some roads, on which it was difficult to pass, were being done to few days prior to the election and that he also saw some repairs being done to bridges. He referred to one road which starts from Arundhutinagar No. 1 and ending at the east of the camp bazar. P.W. 23 (Haran Chandra Choudhury) stated that one tube-well was sunk in the house of Shri Amar Saha, who is his neighbour and Gram Pradhan and that it appears from his activities that he supported the Congress. P.W. 23 (Haran Chandra Choudhury) admitted that he worked for the United Front in the last general election. P.W. 26 (Birendra Chandra Datta) deposed that he believed that the work was done in January and February, 1967 on the eve of the election to influence the voters and to make them cast their votes in favour of the candidates set up by the Congress.

50. As against their evidence R.Ws. 1 (J. K. Choudhury), 3 (Mahesh Chandra Choudhury), 4 (Dhirendra Chandra Chakraborty) 5 (Narendra Chandra Paul), 6 (Rukmini Narayan Bhattacharjee), 8 (Santi Ranjan Rakshit) and 15 (Kalipada Paul) were examined to show that the works were done in the normal course.

51. The Government of Tripura published Ext. B-31. Page 37 shows that 289,670, 846,600 and 1632.00 lakhs of rupees were provided for the first plan, second plan and third plan respectively. Ext. X-16 shows that Rs. 5,03,75,900, Rs. 5,30,07,100; Rs. 42,45,000 and 5,47,56,000 were the Budget estimates for the P.W.D. for 1964-65, 1965-66, 1966-67 and 1967-68 respectively. Ext. X-30 shows the dates of sanction given for the various works as 18th May, 1966, 21st July, 1966, 28th February, 1964, 31st January, 1964; 25th January, 1962; 5th November, 1966; 17th December, 1966, and 31st March, 1966 as per Exts. X-30 (a), X-30(b), X-30(c), X-30(d), X-30(e), X-30(f), X-30(g) and X-30(h) respectively. But, Ext. A-2305 published by the Government shows that while a sum of Rs. 38,612.09 and Rs. 7,200.00 were spent for test relief and gratuitous relief in 1965-66, huge sums of money of Rs. 7,25,874.69 and Rs. 1,15,869.00 were spent towards test relief and gratuitous relief respectively in the year 1966-67. Ext. A-2(e), shows that in the months of January and February, 1967 the expenditure on test relief workers was respectively Rs. 88,512.86 and Rs. 1,11,760.79. Ext. X-18 is a comparative table for the amounts spent for agricultural loans, test relief and gratuitous relief in 1963-64, 1964-65, 1965-66 and 1966-67. It shows that while Rs. 5,19,588, Rs. 2,57,650; and Rs. 2,04,000 were spent in 1963-64; 1964-65 and 1965-66; a huge sum of Rs. 13,20,000.00 was spent for 1966-67. The expenditure under the test relief was, therefore, more than double the expenditure incurred in 1963 and at least 5 times the expenditure incurred in 1964-65 and 6 times the expenditure incurred in 1965-66. Though R.W. 1 (J. K. Choudhury) stated that the works were done in the normal course, he admitted in the cross-examination that, before the election was held, the Tripura Legislative Assembly was dissolved and that Shri S. L. Singh and his Cabinet were allowed to continue as care-taker Government. In the cross-examination, he stated that he does not know under what circumstances the test relief work is done and when it is undertaken and that he does not know whether the work of construction of roads, bridges, embankments etc. is done under the Test Relief work or not. As explained by P.W. 6 (Saroj Chanda) test relief is done in the months of May, June and July, when there is no harvesting work. Ext. B-6 shows that the test relief fund is spent when the purchasing power of the people is destroyed. It is true to say that the test relief work was done in the Constituency in question in part. The work are no doubt beneficial to the people at large P.W. 26 (Birendra Chandra Datta) admitted that the P.W.D. works are done always throughout the year. The works also were no doubt done after the Budget was passed by the Assembly after the consolidated fund was also sanctioned and after the appropriation of account was passed and that the amount was spent by the concerned P.W.D. department. The contention of the petitioner's Counsel is that the Union Territories Act came into force on 1st July, 1963 while the works were sanctioned earlier as can be seen from Exts. X-30(a) to X-30(h), that it is the Administrator (Chief Commissioner) who acts while the Cabinet only advises him and that, therefore, Shri S. L. Singh and his Cabinet could not be said to have spent away the money. Under Article 74 of the Constitution of India, there is a similar Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. Similarly, Article 163(1) of the Constitution of India provides that the Council of Ministers with the Chief Minister at the head will aid and advise the Governor in the exercise of his functions, except in so far as he is by or under the constitution required to exercise his functions or any of them in his discretion. So, the general set up of the administration is the same. But, actually it is the Cabinet which functions and Acts. The fact that Shri S. L. Singh, the Congress Chief was at the helm of the Administration just before the elections were held and the further fact that huge sums of money were spent in the months of January and February, 1967, just before the election go to show that it was the object of the then ruling Congress party headed by Shri S. L. Singh to influence the voters. No, doubt, the fund had to be spent before 31st of March, 1967. There is no reason why the fund was not spent earlier than January and February, 1967. Thus it is evident that the money was spent in January and February, 1967 by the then Congress Government to create an impression in the minds of the electorate—favourable to the Congress Government.

52. *Agricultural loans, etc.*—Para 7(A) (ii) relates to agricultural loans, bullocks, blankets said to have been distributed among the electors in the period just before the election to influence their votes in favour of the Congress. Particulars of the same were mentioned in page 9 of the schedule. But, a study of the particulars shows that the petitioner mentioned only—particulars regarding the bullocks but not the blankets. He mentioned that the distribution took place in January and February, 1967. P.Ws. 1 (Benu Sen Gupta), 23 (Haran Chandra Choudhury), 26 (Birendra Chandra Datta) and 30 (Samar Bakshi Choudhury) are the witnesses who speak to his aspect of the case. The respondent as R.W. 1

and his witness R.W. 8 (Santi Ranjan Bakshit) deny the allegations P.W. 1 (Benu Sen Gupta) stated in the chief examination that, as can be seen from Ext. A-2(c) questioned and reply in the Tripura Legislative Assembly, a sum of about 2 lakhs was spent by the Government towards bullock loans and he stated that the loan was granted to influence the people to vote for Congress. But, he has not got any personal knowledge. He stated in the cross-examination that applications were filed for purchasing bullocks, etc. P.W. 23 (Haran Chandra Choudhury) stated that many persons applied for agricultural loans and got them. P.W. 26 (Birendra Chandra Datta) has no personal knowledge. P.W. 30 (Samar Bakshi Choudhury) stated that bords were taken from the loanees. R.W. 8 (Santi Rajan Bakshit) filed Ext. X-18 table by preparing it with reference to Ext. X-19 agricultural register wherein Ext. 19(a) refers to agricultural loans. There is no proof that agricultural loans were granted illegally.

53. *Radios.*—In para. 7(A) (iii), the petitioner mentioned that radios were given to various clubs to induce their members to vote for the respondent. But, in the schedule he mentioned only one club Nalchor Juba Sangha in Nalchor Bazar and stated that the radio was given to that club one month prior to the election.

54. *Ex. B-44* is the question in the Assembly and the answer to it relating to the radios. P.W. 30 (Samar Bakshi Choudhury) is the only witness who was examined to show that a radio was given to Nalchor Juba Sangha. In the cross-examination, he admitted that he was a worker of the United Front party and that he only heard about the gift of the radio set. So, his evidence is only hearsay. No member of the Club was examined. It follows that this charge fails.

55. *Chief Minister's discretionary fund.*—In paragraph 7(a) (iv), the petitioner states that the Chief Minister's fund was liberally used for the purpose of influencing voters and purchasing their votes. He mentioned particulars of the same at pages 10 to 12 of the schedule. The evidence on this point is that of P.Ws. 1 (Benu Sen Gupta) and 26 (Birendra Chandra Datta) on one hand and R.Ws. 1 respondent and 6 (Rukhmini Narayan Bhattacharjee) on the other. P.W. 1 (Benu Sen Gupta) only relied on the proceedings in the Legislative Assembly and stated that Ext. A-3(a) shows that money was distributed to voters to influence the voters. But, he has no personal knowledge regarding the way in which the Chief Minister's discretionary fund was spent. He admitted that the distribution of funds was in his discretion only. P.W. 26 (Birendra Chandra Datta) stated that Ext. A-3(a) money was distributed in the months of January and February, 1967 to 30 persons and organisations who worked for the congress in the elections and that he personally knew one Adibashi Mahila Samity to which the loan was given, because the Secretary and the members worked for the Congress. He further stated that he personally knew one Shri Rudranath Bhattacharjee a Congress worker to whom money was given and to one Abu Taher Khan, who was editing a paper and that the money was distributed for appointing agents for election work. But, this is not his case in the petition. His case in the petition is that the money was liberally used to purchase votes. But, in the evidence he stated that the money was paid to the Congress workers. Nobody, who received the money from the Chief Minister's discretionary fund, was examined. Ext. B-24 (same as Ext. X-11 to X-14 and X-17) contains the Rules regarding the Chief Minister's discretionary fund produced by R.W. 6 (Rukhmini Narayan Bhattacharjee). He deposed that the Chief Minister's discretionary fund is not Government money, but that it is a fund realised from donations. Ext. X-11 contains the rules as to the way in which the discretionary fund of the Chief Minister should be used by him. A certificate from the Chief Minister, Tripura, that the amount had been disbursed to institutions or persons is sufficient for the purpose of audit. Ext. X-17 shows that while a sum of Rs. 18,182.60 N.P. was spent in 1965-66 out of the Chief Minister's relief fund, a sum of Rs. 50,626.00 was spent for 1966-67. It shows that the Chief Minister spent a sum in 1966-67 which was 2½ times the spent by him in 1965-66. But there is no evidence that it was spent for purchasing votes.

56. *Government land.*—In paragraph 7(a) (v), the petitioner mentioned that Government land was allotted to landless peasants before the election the instance of the respondent and others to induce them to vote for him. In page 13 of the schedule he simply mentioned the name of the place where the allotted lands is said to be situate, but not a single name of any allottee. So, this charge fails.

57. *Starting or Upgrading of Schools.*—In paragraph 7(a) (vi), the petitioner mentioned that schools were started and upgraded overnight in the Constituency of the respondent to make the voters vote in his favour. Particulars of the schools

were mentioned in pages 13 and 14 of the schedule. P.Ws. 1 (Benu Sen Gupta), 9 (Naripendra Chakraborty), (Dakshina Rajan Chakraborty) and 26 petitioner on one hand and R.W.s respondent and 3 (Mahesh Chandra Choudhury) on the other are the concerned witness. P.W. 1 (Benu Sen Gupta) stated that in January and February, 1967, schools in the southern divisions and other divisions were purposely upgraded and that they were 32 in numbers as mentioned in Ext. A-3(b). Of course, he has no got any independent knowledge. But, his evidence is based upon Ext. A-3(b) information furnished by the Government in the Legislative Assembly. P.W. 9 (Nripendra Chakraborty) stated that in his Constituency some schools were upgraded just on the eve of the election, that he went to Gopalnagar when his voters told him that they changed their mind and that they would vote for the Congress because a promise was given to start a Senior Basic School in Gopalnagar.

He further deposed that one Dharendra Debnath was running a school previously, that he joined the Congress as a promise was made to him that a Senior Basic School would be started and that in fact he closed his school. With regard to his evidence the learned Counsel for the respondent argued that his evidence is inadmissible, because he did not take proper oath under the Indian Oaths Act. Before he was examined in Chief, he swore on God according to the form prescribed. But, when the cross-examination began, the respondent's Counsel questioned him whether he believed in God. P.W. 9 (Nripendra Chakraborty) replied that he did not believe in God. So, he was then sworn by solemn affirmation and he was cross-examined. The contention of the respondent's Counsels is that his evidence is inadmissible. But, this is not correct. Under section 13 of the Indian Oaths Act, the irregularity affects the credibility of the witness and not the admissibility of his evidence. Vide *Rameshwar Vs. The State of Rajasthan* (A.I.R. 1952 S.C. 54). However, the petitioner did not examine Dharendra Debnath, p. 111 (Dakshina Rajan Chakraborty) is a resident of Gopalnagar Colony is Sidhai. He deposed that he was the Secretary of Gopalnagar Primary School, that a meeting was held in Satdubia Bijay Sangha Club at about 7 or 8 P.M. about 2 months prior to the election, that Shri S. L. Singh, Shri S. R. Chakraborty (the then S.D.M. Sadar) and Shri Promode Das Gupta and some villagers were also present in the meeting and that P.W. 11 (Dakshina Rajan Chakraborty) went there as he was called. He further stated that Shri S. L. Singh told him that if he voted for the Congress, Shri S. L. Singh would upgrade his school, that P.W. 11 (Dakshina Rajan Chakraborty) replied that voting was a personal affair and that it should not have anything to do with the upgrading of the school, but that subsequently the school was upgraded, that P.W. 11 (Dakshina Rajan Chakraborty) was removed from the Secretaryship and that Shri Dharendra Chandra Debnath was made the Secretary of the School. His evidence also shows that Shri Dharendra Debnath was formerly a supporter of United Front, but that he joined the Congress later on and he worked for the Congress also. He was not summoned. But, he attended the Court as the petitioner had asked him to give his evidence before the petitioner was taken into custody. P.W. 11 (Dakshina Rajan Chakraborty) is a Moharar in Mohanpur Settlement Office. He also worked for the United Front. He admitted that a resolution was passed removing him from his Secretaryship, but that he had no knowledge of the resolution. It appears that he did not inform P.W. 26 (Birendra Chandra Datta) about the incident. But, his evidence that he was removed from the Secretaryship and that the school was upgraded on the eve of the election stands. P.W. 26 the petitioner stated that he had no personal knowledge about the upgrading of schools and admitted that the schools were upgraded under the Rules framed by the West Bengal Board of Education. As against their evidence, R.W. 1 the respondent stated that in this region the school season is from 1st January to 31st December, while the College session is from 1st June to 31st May and that new schools start from January upto 20th February, while new Colleges are started mostly in July. It is also his evidence that there was no particular policy at the time of the election for upgrading of schools and that schools were upgraded in the months of January and February according to the rules. He mentioned that there are certain rules and conditions to be fulfilled. Firstly, there must be requisite extent of land. Secondly, there must be a reserve fund. Thirdly, there must be a requisite number of qualified teachers according to the standard of the schools. Fourthly, there must be a suitable Headmaster. The Government will come with a grant for furniture, library etc. In many cases the Government is said to be demanding a matching grant from the locality unless it is poor. He denied knowledge of the school in Kathalia having been upgraded. R.W. 3 (Mahesh Chandra Choudhury)—produced Ext. X-3 comparative table showing upgrading and starting of schools from 1964-65 to 1966-67. He also brought Ext. X-4 a copy of the Budget. Ext. X-3 was prepared with reference to the Ext. X-10 register of schools.

The register was not properly and regularly maintained as can be seen from evidence of R.W. 3 (Mahesh Chandra Choudhury) himself. But, as can be seen from Ext. A-3(a) at least 32 schools were upgraded in January and February, 1967. This is a correct information as it was furnished by the Government itself.

**58. Writing off of refugees' loans.**—Though loans due from refugees from East Pakistan were not mentioned in paragraphs 7 and 8 of the petition, this was mentioned at page 15 of the schedule, wherein it was stated that on the eve of the election the Government of Tripura relieved the refugees of Tripura from paying a loan to the extent of seven and a half crores of rupees lent as housing and small business loans and that this lead the Government to earn votes in the fourth general election in favour of the Congress candidate. This is a new allegation which is not found either in Ext. A2368 or in the election petition. It is, therefore, time barred. Anyhow, there is evidence of P.W. 26 petitioner and R.W. 1 respondent on this point. The matter was also published in Exts. A-11 and A-12 newspapers. It was stated in Ext. A-11 news in Bengali in Ganaraj, dated 9th February, 1967 that the refugees who came to Tripura prior to 31st December, 1963, and who took loans prior to 31st March, 1964, for small scale business, agricultural and house building purposes would get rebate to the tune of seven and a half crores of rupees and that 69,800 refugees families would be benefited thereby. Ext. A-12 is a news item to the same effect in Dank Ga a Abhijan, dated 10th February, 1967. It is said to be application of the Congress. Therein it was further stated that in consideration of the economic condition of the refugees in Tripura the remission of loan had been arranged with the previous approval of the Central Government and on the initiative of the State Government and that as a result the average amount of remission of loan per family came to rupees seven and a half thousands. Ext. A. 12 therefore shows that the initiative was taken by the then State Government ruled by the Congress party and that a huge sum of rupees seven and a half crores due from the refugees was remitted just on the eve of the election. In this connection it is necessary to remember that in Tripura 80 per cent of the population consists of Bengali refugees who have come over to Tripura from East Pakistan. So, the remission of a loan to the extent of seven and a half crores of rupees must have very much influenced the refugees voters on the eve of the election. P.W. 26 the petitioner stated that he himself tried for remission in 1965, that the loans were sanctioned more than 5 years back, but that they were not remitted when he made a demand. It appears that a person also went on hunger strike for remission of the loans. R.W. 1 the respondent explained that the Evacuee property Act was passed enabling the Government of India to acquire the properties of the persons in India who left for Pakistan, that a similar Act was passed in Pakistan enabling the Pakistan Government to acquire the lands of the Hindus who migrated to India, but that as no compensation was paid by the Government of India, especially to the refugees from East Pakistan and as the Acts were not applied mutually, the Government of India remitted the loans upto certain extent. He further deposed that the proposal to remit the loans was pending with the Central Government for about 5 years, that the matter was that of the Central Government and not of the local Government and that the loans were not remitted to earn votes for the Congress. As already stated, this remission was not made when P.W. 26 the petitioner made demand long before the elections took place. The fact that about 70 thousand families of refugees were relieved of their burden to discharge the loans on the eve of the election is impregnate with a *mala-fide* motive. But this question cannot now be agitated as the plea of remission of refugees' loans is barred by limitation.

**59.** Thus, the petitioner has proved out of the various allegations made by him in paragraph 7(A) except the incident (No. vii which will be referred to later on) that the then care taker Congress Government headed by Shri S. L. Singh spent huge sums of money for the construction of roads, bridges, embankments, tube-wells, etc., and for upgrading 32 schools on the eve of the election in the months of January and February, 1967. It is true that the respondent was then mixing with the opposite parties and that he had no direct hand in the works ordered to above. But, evidently the works were taken up in January and February, 1967 by the then Congress Government to create an impression in the mind of the electorate that the Congress Government was doing beneficial acts. Shri S. L. Singh thereby prepared the ground for a favourable atmosphere for the success of the candidates set up by the Congress. The respondent, having accepted a Congress ticket, must be held to be bound by the action of the Congress Government. The Congress Government and Shri S. L. Singh, whose actions were adopted by the respondent by accepting their ticket were his agents. It is true that there are a number of decisions which held that the party in power can execute public beneficial acts



even on the eve of the election. An offer made to landless peasants and poor without any distinction of caste, creed, etc., does not amount to a corrupt practice. Vide *Swaminatha Merikondar, Vs. Ramalingam and others* (2 E.L.R. 390). Providing for public fountains in the locality is not a corrupt practice. It cannot be suggested that candidate holding civic or other offices should discontinue or slow down his official activities due to elections for fear that they might have an effect on the fortunes of the elections. It is highly dangerous and subversive of all good civic administration to start with a presumption that all benevolent and public utility acts on the eve of the elections were done with a corrupt motive, unless the contrary is proved. Vide *Hariramsingh Vs. Kamtaprasad Sharma* (A.I.R. 1966 M.P. 255). It is legitimate for a member of the Parliament or a State Legislature to benefit his Constituency, though the element of time becomes a very material one to find out whether his acts were done with ulterior motive to influence the voters. Vide *Bankabehari Das Vs. Chittaranjan Naik* (A.I.R. 1963 Orissa 83). Vide also *Chadalavada Subha Rao Vs. Kasu Brahmananda Reddy and others* (A.I.R. 1967 A.P. 155).

60. But there are three rulings of the Supreme Court which have bearing on this aspect of the case. In *S. Khader Sheriff Vs. Munuswami* (A.I.R. 1955 S.C. 775) it was held that while it is meritorious to make a donation for charitable purposes, if that is made at the time or on the eve of an election, it is open to the charge that its real object was to induce the electors to vote in favour of the particular candidate and that it should therefore be treated as election expense. The matter is, however now covered by two latest rulings of the Supreme Court dated 7th February, 1968. They are *Ghasi Ram Vs. Dal Singh and others* (Civil Appeal No. 1632 of 1967) and *Mrs. Om Prabha Jain Vs. Abnash Chand and another* (Civil Appeal No. 1862 of 1967) on the file of the Supreme Court of India. In the former case the petition was filed in the High Court of Punjab and Haryana to set aside the election of Shri Dal Singh, who was the Minister for Irrigation and Power in the Ministry of Shri Bhagwat Dayal Sharma, till the result of the election was pronounced. He was charged with having abused his position as Minister and having committed corrupt practices. It was alleged that he used certain discretionary funds to bribe the voters and that he used his position to favour some of the villagers to secure support for his candidature. It was held that the gist of the corrupt practice lay in attempting to do something for those opposed to be candidate with a view to changing their votes and as a bargain for their votes. Their Lordships summarised the position of law that a corrupt practice involving bribery must be fully established, that the evidence must show clearly that the promise or gift directly or indirectly was made to an elector to vote or refrain from voting at an election, that the position of a Minister is difficult, that it is obvious that he cannot cease to function when his election is due, that he must of necessity attend to the grievance and that otherwise he must fail. He must improve the image of his administration before the public. If everyone of his official acts done *bonafide* is to be construed against him and an ulterior motive is spelled out of them, the administration before the public. If everyone of his official acts done *bona fide* is the money was not distributed among the voters directly but was given to Panchayats and the public at large. It was to be used for the good of those for and those against the candidate. That, no doubt, had the effect of pushing forward his claim, but that was inevitable even if no money was spent and good administration changed the people's condition. But, however, it was finally observed that election is something which must be conducted fairly, that to arrange to spend money on the eve of elections in different constituencies although for general public good is when all is said and done, an evil practice, even if it may not be a corrupt practice, that the dividing line between an evil practice and a corrupt practice is a very thin one, it should be understood that energy to do public good be used not on the eve of election but much earlier and that even slight evidence might change this evil practice into a corrupt practice. The Court further said that payments from discretionary grants on the eve of elections should be avoided. In the present case also there is no evidence to show that the money was spent by way of bargain to purchase the votes. The constructions were made for the benefit of both in favour of the Congress and those who were against the Congress Government. So, the case is one of an evil practice or a malpractice and not of corrupt practice within the meaning of section 123 of the Act. The learned Counsel for the petitioner could not get over these two recent rulings of the Supreme Court. They are directly applicable to this case, so far as the above aspect of the case is concerned.

61. *Withdrawal of Harimohan Debnath.*—In paragraph 7(A) (vii), the petitioner alleges that one Hari Mohan Dev Nath (R.W. 9), an independent candidate standing for election to Tripura Assembly from the Mohanpur Assembly Constituency

was prevailed upon by Shri S. L. Singh to withdraw his candidature as consideration for his appointment as the Chairman of Mohanpur Block Development Committee, so that R.W. 9 (Hari Mohan Dev Nath) might use his office to influence the voters to cast their votes in favour of the respondent. P.Ws. 1 (Benu Sen Gupta), 9 (Nripendra Chakravorty), 12 (Lalmohan Das), 22 (Girindra Chandra Deb) and 26 petitioner on one hand and R.Ws. 1 respondent and 9 (Hari Mohan Dev Nath) on the other are the relevant witnesses. P.W. 1 (Benu Sen Gupta) stated that he read news items Exts. A-4 and A-5 in Gana Abhijan and Jagaran, dated 25th January, 1967 and 26th January, 1967, about this incident and has no personal knowledge. In Ext. A-4 it was mentioned that the prospects of Shri Promode Das Gupta had been strengthened because of withdrawal of candidature by R.W. 9 (Hari Mohan Dev Nath) from the election, that Promode Das Gupta would get the direct support of R.W. 9 (Hari Mohan Dev Nath) and that the cause of withdrawal as stated by R.W. 9 Hari Mohan Dev Nath was that he would support the Congress which had dedicated itself for the cause of reformation of the country. In Ext. A-5 it was stated that R.W. 9 (Hari Mohan Dev Nath) was appointed as Chairman of the Development Committee of the Mohanpur Block that the said post was held by the Chief Minister Shri S. L. Singh, but that being heavily pre-occupied he proposed R.W. 9 (Hari Mohan Dev Nath), a renowned social worker of the locality, for that post. In the absence of examination of the reporter of the news items Exts. A-4 and A-5, they constitute only hearsay evidence. The evidence of P.W. 9 (Nripendra Chakravorty) also shows that he has no personal knowledge. But, P.W. 12 (Lalmohan Dass) stated that he and R.W. 9 came to Agartala as R.W. 9 (Hari Mohan Dev Nath) wanted to file his nomination paper, that when they reached the Motor Stand, one Shri Usha Ranjan Chaudhury, a Gram Pradhan, embraced them and told them that the Chief Minister wanted to see them both. It is his evidence that he and R.W. 9 (Hari Mohan Dev Nath) went to the residence of the Chief Minister, that the latter told R.W. 9 (Hari Mohan Dev Nath) that both of them worked together throughout their lives and asked him why he was standing as an independent candidate and further requested him not to contest but to withdraw his candidature. R.W. 9 (Hari Mohan Dev Nath) replied that he had spent about Rs. 600/- or Rs. 700/- and refused to withdraw P.W. 12 (Lalmohan Das) went on to state that the Chief Minister replied that if he heard his word, he would compensate him, that R.W. 9 (Hari Mohan Dev Nath) asked the Chief Minister to give him the post of the Chairmanship of Mohanpur Block Development Committee and that the Chief Minister promised to give him the post to him and further stated "I give you the post" and asked P.W. 12 (Lal Mohan Das) not to interfere with the election campaign. In the cross-examination, he deposed that he worked for the United Front, that he was not summoned, but that the petitioner asked him to attend the Court. He admitted that R.W. 9 (Hari Mohan Dev Nath) is a respectable man and stated that he did not know whether R.W. 9 (Hari Mohan Dev Nath) filed the nomination paper, but that R.W. 9 (Hari Mohan Dev Nath) came to deposit Rs. 250/- and that the talks with the Chief Minister took place before the amount was deposited. The evidence of P.W. 22 (Girindra Chandra Deb) is that R.W. 9 (Hari Mohan Dev Nath) is a resident of his locality, that in the Panchabati bazar one Harendra Debnath, the son-in-law of R.W. 9 (Hari Mohan Dev Nath) and one Arabinda Debnath asked R.W. 9 (Hari Mohan Dev Nath) why he withdrew without consulting them when all of them supported his candidature and that R.W. 9 (Hari Mohan Dev Nath) replied that Shri S. L. Singh persuaded him to withdraw his candidature promising to bear his expenses so far incurred and to make him the Chairman of Mohanpur Block Development Committee. He is not in any way connected with the United Front or the petitioner. It was pointed out that he did not tell P.W. 9 (Nripendra Chakravorty) about this incident. P.W. 26 the petitioner did not state that he was told either by P.W. 9 (Nripendra Chakravorty) or by P.W. 12 (Lalmohan Dass) or by P.W. 22 (Girindra Chandra Deb) about this incident. As against their evidence, R.W. 9 (Hari Mohan Dev Nath) deposed that though he stood as a candidate he withdrew voluntarily. He denied having withdrawn his candidature as consideration for the Chairmanship of Mohanpur Block Development Committee and for using his office to influence the voters in favour of the Congress candidates. He denied that P.W. 12 (Lalmohan Das) accompanied him, but he stated that he alone went to the Chief Minister to have a talk about the Development Block. He admitted that in the Panchabati bazar his son-in-law Harendra Debnath and another Arabinda Devnath asked him why he stood as candidate in spite of his ill health and why he withdrew. He denied having told them that Shri S. L. Singh asked him to withdraw promising to bear his expenses—incurred by then and to make him the Chairman of Mohanpur Block Development Committee. Ext. A-6 was got printed and distributed by him appealing for money, when he stood as an independent candidate. His evidence shows that he holds several honorary posts. He admitted that he was ultimately made the Chairman of Mohanpur Block Development Committee, but stated that

all the members of the Mohanpur Block Development Committee were nominated by the Government and that there was no contest for his election. He denied having seen Exts. A-4 and A-5 pamphlets. Now, it has to be noted that the polling took place on 18th February, 1967, while R.W. 9 (Hari Mohan Dev Nath) was made Chairman of the Block Development Committee on 27th October, 1967 about 8 months after the polling took place. The only circumstances which is highly suspicious is that the post of the Chairman of the Block Development Committee of Mohanpur was previously held by Shri S. L. Singh. So, it is quite probable that R.W. 9 (Hari Mohan Dev Nath) might have withdrawn his candidature as consideration for being made the Chairman of the Mohanpur Block Development Committee. As R.W. 9 (Hari Mohan Dev Nath) denied the incident and is admitted by P.W. 12 (Lalmohan Das) to be a respectable person, the evidence can only be said to be just balanced. The benefit of doubt goes to the respondent.

62. *Procuring the services of government officials.*—In sub-para B of para 7, the petitioner made allegations that the respondent procured the assistance of Government officers for the furtherance of the prospects of his election. Particulars of their names and activities were mentioned at pages 14, 15, 16 and 17 of the schedule filed on 13th November, 1967. There is no evidence about the Executive Engineer, Shri S. R. Choudhury, Zonal S.D.O. of Udaipur, Shri B. Bhattacharjee, A. H. M. of U. K. Academy and Shri Nikunja Behari Banik, as mentioned in the petition. The evidence against the other officers has to be considered. It is said that Shri A. K. Sen, the Principal Engineer of Tripura was sent for on 18th January, 1967 at noon by the respondent to his house and that Shri A. K. Sen worked directly for the congress. P.Ws. 1 (Benu Sen Gupta), 6 (Saroj Chanda) and 26 (petitioner) on one hand and R.W.s 1 respondent and 15 (Kalipada Paul) on the other are the witnesses on this point. P.W. 1 (Benu Sen Gupta) deposed that Shri A. K. Sen went to the house of the respondent and worked for the congress and that this news was published in Ext. A-7 Dasher Dak dated 27th January, 1967. As the reporter was not examined, Ext. A-7 contains only hearsay evidence P.W. 1 (Benu Sen Gupta) has not got any personal knowledge. P.W. 6 (Saroj Chanda) also has no personal knowledge that Shri A. K. Sen visited the house of the respondent. But both P.W. 6 (Saroj Chanda) and P.W. 26 petitioner stated that they saw Shri A. K. Sen attending to supervise the constructions before the elections. As already stated, this does not fall under corrupt practice, though this can be styled as an evil practice or a mal-practice. R.W. 1 respondent denied having sent for Shri A. K. Sen. R.W. 15 (Kalipada Paul) produced Ext. X-29 to show that Shri A. K. Sen applied for leave in connection with his daughter's marriage which had to be held in Calcutta and handed over charge in the afternoon of 20th January, 1967 and that he again took over charge on 13th February, 1967. In the cross-examination, he stated that Shri A. K. Sen went away to Calcutta after handing over charge and that this information is based upon Ext. X-29. So, he has no personal knowledge. It was argued by the learned Counsel for the petitioner that the respondent should have examined Shri A. K. Sen. But, when P.Ws 1 (Benu Sen Gupta), 6 (Saroj Chanda) and 26 petitioner have no personal knowledge and when R.W. 1 the respondent denies having sent for Shri A. K. Sen, the burden is not upon the respondent to disprove the petitioner's allegation.

63. At page 15 of the schedule it was alleged that one Shri Alok Datta, B. D. O. Mohanpur Block constructed an—embankment on 18th February, 1967 on the date of election at Jairajbari in Mohanpur Tahsil and that he asked the voters of that place to vote for the congress. P.W. 9 (Nripendra Chakraborty) is the witness who deposed to this incident. But, he stated that this incident happened on 18th January, 1967. He did not see the embankment and has no personal knowledge.

64. One Shri Manik Ganguli A. D. M. Food, was said to have canvassed for votes for the respondent in Salgarh Tahsil from 12th February, 1967 to 15th February, 1967. But, his name was not originally mentioned in paragraph 7B of the petition. P.W. 1 (Benu Sen Gupta) referred to Ext. A 2310 tour diary of Shri Manik Ganguli for the months of January and February, 1967. But, he has no personal knowledge of his activities.

65. The next Government officer referred to is Shri S. R. Chakraborty, the then S. D. M. He was said to have visited the house of Shri Nripendra Ghosh, a congress leader of Harinakhola on 21st January, 1967 at 7 p.m. and held a group meeting there in favour of the congress. It is also alleged that at about 10 P. M. he went to the house of Shri Umesh Deb Nath of Gopalnagar and asked the people there to vote for the congress. P.Ws. 1, 9, 26 and 27 are the witnesses who speak to this aspect of the case. P.W. 1 (Benu Sen Gupta), the election agent

of the petitioner, deposed that he saw—publications to the above effect in Exts. A-8 and A-9 in Ganaraj and Deshar Dak. In Exts. A-8 and A-9 it was stated that Shri S. R. Chakraborty went to Harishkhola, while in the schedule the petitioner mentioned that Shri S. R. Chakraborty went to Harinakhola. But, both are the same. Much cannot be made of from the difference in the spelling. In Ext. A-9 it was mentioned that Shri S. R. Chakraborty went to the house of Shri Umesh Deb Nath of Gopalnagar and requested him to make election propaganda in favour of the congress and that in the night he held a group meeting in the House of Shri Nirpendra Ghosh for supporting the congress candidate Shri Promode Das Gupta. P.W. 1 (Benu Sen Gupta) however has no personal knowledge. P.W. 9 (Nripendra Chakraborty) deposed that Shri S. R. Chakraborty spent at least 15 days in his Constituency as can be seen from Exts. A-2299, A-2299(a) and A-2299(b) in the months of January and February, 1967, that wherever P.W. 9 (Nripendra Chakraborty) went for his election propaganda, he was told that Shri S. R. Chakraborty had come and threatened the voters asking them not to vote for the communist party members but, to vote for congress and that if they voted for the communist party members, they would be implicated in cattle lifting cases. He further deposed that in fact there was cattle lifting, that when he was a member of the Assembly previously, he put questions but that he could not find any information about the actual number of cases of cattle lifting booked and whether the accused were punished and that Shri S. R. Chakraborty did not take any interest in stopping the cattle lifting either before or at the time of election. He wanted to substantiate his evidence by stating that in the dead of night on 29th January, 1967 one of his workers P.W. 16 (Shri Amulya Datta) of Mantala colony was arrested in Mantala colony, that a jeep was brought in which there were a congress worker R.W. 12 (Prabir Shyam) of Katlamara and the O. C. Sidhal Police station and that the jeep was that of Shri S. R. Chakraborty. In the cross-examination, he stated that he did not remember where he was on 29th January, 1967 and he has no personal knowledge about the incident. P.W. 26 (Birendra Chandra Datta) also has no personal knowledge. P.W. 27 (Radharaman Deb Nath) was the election agent of P.W. 9 (Nripendra Chakraborty). He deposed that he was present in the meeting which was held in the house of Umesh Deb Nath of Gopalnagar at about 8 P. M. or 9 P. M. and that Shri S. R. Chakraborty asked the voters to vote for the congress. Though the name of P.W. 27 (Radharaman Deb Nath) was not mentioned in the list of witness filed by the petitioner, his evidence is not unbelievable. He must have been attending the meetings—organised by the congress also. Though it was mentioned in Ext. A-9 that Shri S. R. Chakraborty canvassed for votes for Shri Promode Das Gupta, it was further stated that he canvassed for the congress i.e. for the respondent also.

66. The petitioner alleges that on 4th February, 1967 at 11 P. M. Shri S. R. Chakraborty visited the house of one Shri Dhirendra Deb Nath a congress leader in Satdobla and that he asked the people to vote for the congress. P.Ws. 11 (Dakshina Rajan Chakraborty) and 26 (Birendra Chandra Datta) are the witnesses who were examined to prove this incident. P.W. 11 (Dakshina Rajan Chakraborty) is a resident of Gopalnagar colony. He deposed that on 4th February, 1967 Shri S. B. Chakraborty held a meeting in the house of Shri Dhirendra Chandra Deb Nath, that P.W. 11 (Dakshina Rajan Chakraborty) was also called to that meeting and that Shri S. R. Chakraborty asked the audience to vote for the congress and told them that if they did not vote for the congress, the Bengalees would be driven out. He is a Moharar in Mohanpur Settlement Office. He worked for the United Front. He attended the Court because the petitioner had asked him some days before the date of his deposition to attend the Court to give his evidence. No doubt, he is interested in the petitioner. P.W. 26 (Birendra Chandra Datta) has no personal knowledge.

67. The petitioner alleged that on 9th January, 1967 Shri S. R. Chakraborty went to the house of Shri Monmohan Nath of village Motai in Simna Tahsil, that he visited the house of Shri Hridy Nath of Fatikchhera, that Monmohan Nath and Hriday Nath were both the workers of respondent and that Shri S. R. Chakraborty worked upto 2 A. M. in the village Motai,—Fatikchhera, Satdobla. P.W. 26 the petitioner produced Ext. A-10 newspaper which contains a news item that Shri S. R. Chakraborty visited the house of Shri Monmohan Nath at about 2 A. M., that he also visited Fatikchhera. Moti. in the dead of the night and that he roamed from Fatikchhera to Motai in the course of a campaign for the congress. But, he has no personal knowledge about this. P.W. 27 (Radharaman Deb Nath), the election agent of P.W. 9 (Nripendra Chakraborty), deposed that Shri S. R. Chakraborty went to the house of Manmohan Deb Nath of Motai at 9 P. M. on 9th January, 1967 and asked the people to vote for the congress and that he also attended the meeting.

68. With regard to the above incidents which were actually witnessed by P.Ws. 11 (Dakshina Rajan Chakraborty) and 27—(Radharaman Deb Nath) the evidence shows that Shri S. R. Chakraborty was canvassing for the congress candidates including the respondent. In para 56 the evidence of P.W. 11 that Shri S. R. Chakraborty attended a congress propaganda meeting held by Shri S. L. Singh has already been referred to. This also shows that Shri S. R. Chakraborty was attending congress political meetings held Shri S. L. Singh to further the prospects of the congress candidate including the respondent and probalises the evidence of P.Ws. 11 and 27 that Shri S. R. Chakraborty was actively—canvassing for votes for the congress candidate. The learned Counsel for the respondent argued that it was the work of Shri S. R. Chakraborty to prevent cattle lifting and also to arrange the polling stations as Returning Officer and that, therefore, he performed journeys in connection with his duties as evidenced by Exts. A-2299(a), A-2299(b) and A-2299(c) and that he did not canvass for the congress candidates. Also he contended that section 123(7) of the Act contemplates a positive act on the part of the candidate in procuring the assistance of a Government servant. He further contended that the word "obtain" in section 123(7) was not used in the sense of a mere passive receipt of assistance, without the candidate being even conscious of the fact that the assistance has been rendered. His contentions is that Shri S. R. Chakraborty might have taken part in the election campaign on his own initiative to please the Chief Minister. He relied on the passages at page 88 of Election Law and practice by D. D. Chowla 1967 edition and Rikhab Das Vs. Riddhichand Palliwal and others (9 E.L.R. 115), Moti Lal Vs. Mangala Prasad and others (A.I.R. 1958 Allahabad 794) and Biresh Misra Vs. Ram Nath Sarma and others (A.I.R. 1959 Assam 139) in support of his contention. But, when there is sufficient evidence on record to show that Shri S. R. Chakraborty was campaigning and canvassing for the congress candidates, the respondent should have examined Shri S. R. Chakraborty to rebut the evidence, especially as the respondent admits that Shri S. R. Chakraborty toured in the nights as can be seen from the tour diaries Exts. A-2299(a) and A-2299(b). No reason was given by the respondent why he did not examine Shri S. R. Chakraborty. It cannot be stated that P.Ws. 11 (Dakshina Rajan Chakraborty) and 27 (Radharaman Deb Nath) are liars and that they perjured themselves. The fact that Shri S. R. Chakraborty canvassed for the congress candidate for about 15 days in Mohanpur Constituency as spoken to by P. Ws. 9 (Nripendra Chakraborty), 11 (Dakshina Rajan Chakraborty) and 27 (Radharaman Deb Nath) shows that the respondent must have procured his assistance. So, the conduct of the respondent falls under section 123(7) of the Act and his election is void under section 100(1)(b) of the Act.

69. *Mike of Publicity Department of the Government of Tripura.*—The petitioner then stated in the schedule that Shri S. L. Singh addressed the meetings in Bairagi bazar, Melaghar, Dhanpur and Sonamura through the Government Publicity—departments mike P.Ws. 1 (Benu Sen Gupta), 26 (Birendra Chandra Datta) and 30 (Samar Bakshi Choudhury) are the witnesses who speak to this. P.W. 1. (Benu Sen Gupta) has not personal knowledge and did not see the mike. P.W. 26 (Birendra Chandra Datta) had no personal knowledge and saw only a newspaper item in Ext. A-13 to that effect. P.W.30 (Samar Bakshi Choudhury) deposed that he was present when Shri S. L. Singh addressed the meetings and that he saw the words "Publicity Department" on the mike. But, it has to be noted that the petitioner did not mention this item in his original election petition. But, he introduced this in the schedule. So, his allegations about the Government Publicity Department mike are barred by limitation and cannot be entertained.

70. *Use of Government Jeeps and Vehicles.*—The petitioner alleged in the same sub-para B of para 7 that Government jeeps and Vehicles bearing TRA 448, TRA 302 and TRA 311 were placed at the disposal of all congress candidates including the respondent. In para 7-E he alleged that voters were conveyed freely to the polling stations by the respondent and his agent in trucks and jeeps bearing TRL 143, TRT 15 and TRL 148, P.Ws. 9 (Nripendra Chakraborty) and 17 (Akul Chand Datta) are the witnesses of the petitioner who spoke to the use of the Government vehicles for transporting the voters, while R.W. 1 respondent, 11 (Bedabrata Chakraborty) and 12 (Prabir Shyam) denied the same. P.W. 9 (Nripendra Chakraborty) deposed that on 18th February, 1967 when he went to Social Education Centre, Katlamara, he found that voters were brought in jeep and truck belonging to R.W. 11 (Shri Bedabrata Chakraborty) of Megloband Tea Estate to the polling station, that he lodged a written complaint to the Presiding Officer of the polling station, that when he went to Mantala colony polling station at about 1-30 P. M., he found the same truck bringing voters to the polling station

that R.W. 11 the owner of the truck was an active congress worker, that at about 3.30 P. M. when he went to Bijoynagar polling station (1) he saw the same truck bringing voters to the polling station and that he submitted a written complaint before the Presiding Officer in Mantala colony police station. P.W. 17 (Akul Chand Dutta) deposed that on the polling day the congress party transported voters in truck to Mantala polling centre from Braja Benodiniapur, that he noted the number of the truck as 143 and that he saw a number of voters by name Manmohan Sarkar, Kamini Sarkar, Aswini Debnatha, Sshir Mohan Name and that R.W. 12 Shri Prabir Shyam of Katlamara was a congress worker who brought them in the truck. In the cross-examination, he deposed that he did not tell his brother P.W. 16 (Amulya Kumar Datta) about the transport of the voters and that he does not know English. But, he remembered the number of the truck as 143. R.W. 1 (J. K. Choudhury) denied transport of voters to any polling station. R.W. 11 (Bedabrata Chakraborty) is the owner of Meghlihand Tea Estate. He swore that he never owned any truck or Jeep much less TRL 143. R.W. 12 (Prabir Shyam) denied having transported the workers in TRL 143 or in any other truck. So, the evidence is equally balanced and benefit of doubt goes to the respondent.

71. *Fixation of polling stations and conduct of polling officers.*—The petitioner alleged in sub-para E of para 7 of his petition that a number of polling stations were fixed arbitrarily and that the polling officers acted with—partially in favour of the congress candidates. But, no evidence was let in in support of the various allegations. There is only the evidence of P.W. 9 (Nripendra Chakraborty) who deposed that polling stations were fixed arbitrarily and that one N. Bhowmick asked the voters in a polling station to put cross marks on the congress symbols. But, in the schedule it was mentioned that one Birendra Bhattacharjee, A. H. M. of U. K. Academy who asked the voters to put cross marks on the congress election symbols. The evidence of P.W. 9 (Nripendra Chakraborty) is in variance with the allegations of the petitioner. R.W. 2 denied having fixed the polling stations arbitrarily. The petitioner's Counsel did not address arguments with regard to the various allegations made by him regarding the change of polling stations or the alleged campaign of the polling officers.

72. *Supply of supplementary voter's lists.*—The net allegation of the petitioner in para 7-B is that the supplementary voter's lists were not sent to the United Front or its candidates, but that they were sent to the Presiding Officers directly when the polling had started and that thus the petitioner's electoral rights of canvassing for votes of about 36000 voters was prejudiced. A right to canvass for votes is an electoral right within the meaning of section 123(2) of the Act. Vide *M. A. Muthiah Chettiar Vs. Sa. Ganesan* and another (A.I.A. 1958 Madras 553). Though the petitioner alleged that the supplementary voter's lists containing about 36 thousand voters was not given to his party P.Ws.1 (Benu Sen Gupta) and 6 (Saroj Chanda) and the petitioner P.W. 26 himself admitted that they were given to his party but two days prior to the election, while the congress party was given a copy of the supplementary voters' list much earlier. Exts. A-14 to A-19 are the supplementary voter's lists. The respondent produced Ext. X-9 Peon's Book to show that the supplementary lists of voters were furnished to all the recognised parties namely, Tripura Pradesh Congress Committee, C.P.I. (M) and C.P.I. on 15th February, 1967. There is much substance in the petitioner's grievance and his attack against the then Government regarding the supplementary voters' lists is amply justified. Ext. A-18 shows that the enrolment of supplementary voters must have been over by at least 12th January, 1967. Evidently R.W. 2 (N. G. Choudhury), the Chief Electoral Officer had already got information about the number of ballot papers which were required. He must have received the ballot papers for not only the voters who were already in the lists but also for the 32 thousand and odd supplementary voters (already referred to in para 45) who were subsequently enrolled prior to 12th January, 1967. The evidence of R.W. 2 (N. G. Choudhury) is that he received the ballot papers on 5th February, 1967. So, the preparation of supplementary voters' lists and other matters were all over by that day. R.W. 2 (N. G. Choudhury) deposed that several parties phoned to him to expedite the distribution of supplementary voter's lists and that he did his best by giving the lists to them on 15th February, 1967. The elections were actually held on 2th February, 1967. The petitioner's counsel stated that canvassing for votes had to be stopped by all the parties 48 hours prior to the election. So, the parties were not allowed to canvass for votes from 16th February, 1967. As such, the petitioner had hardly one day to canvass for the votes of about 32 thousand and odd supplementary voters, who were living in different villages as can be seen from Exts. A-15 to A-19. It was physically and humanly impossible for the petitioner's party to approach those 32 thousand and odd

supplementary voters on one day in different places. But, that the congress party got information about the names of the supplementary voters is clear from two circumstances. Firstly, the evidence of P.Ws. 6 (Saroj Chanda) and 26 (petitioner) is that the supplementary voters, who were approached by the congress candidates and their agents, had slips with them containing their numbers in the voters' lists which were given to them by the congress agents. P.W. 6 (Saroj Chanda) deposed that when he went to Abhoynagar Higher Secondary School polling station, his polling agent told him that the supplementary list of voters was received by the Presiding officer at the time of the polls, that P.W. 6's agents had no chance of verifying the correctness of the list and that P.W. 6 (Saroj Chanda) could not supply him with any slip because he did not get the supplementary voters' lists by then. He further deposed that the voters approached by the congress candidates and their agents had already slips with them which were given to them by the congress agents. P.W. 26 (petitioner) deposed that in some polling stations, he saw congress volunteers distributing lists to the supplementary voters, of whom P.W. 26 (Birendra Chandra Datta) had no knowledge prior to that, that the Pradesh Congress Committee received the lists earlier because it would take time to prepare the slips for all the supplementary voters and get them ready for distribution. He swore that he had no list in his possession, that he could not approach the supplementary voters for votes, that the supplementary voters were living through the entire Constituencies and that it was impossible for him to communicate with them in time. So, the evidence of P.Ws. 6 (Saroj Chanda) and 26 (Birendra Chandra Datta) shows that the Pradesh Congress Committee was ready with Slips on 18th February, 1967. It was impossible to prepare the slips for 32 thousand odd voters at the time of the polls unless the Pradesh Congress Committee had information about the names of the Supplementary voters much earlier. Secondly, it is to be noted, as rightly pointed out by the petitioner's Counsel, that the respondent has no grievance that the supplementary voters' lists were given to his party on 15th February, 1967. The respondent does not allege that he was in any way prejudiced. R.W. 1 respondent admitted in his cross-examination that it is probable that about 39 thousand supplementary voters might have come to Tripura between 1962 and 1967. The petitioners Counsel did not point out any rule as to when the supplementary voters' list had to be furnished to the parties. But in the circumstances invidious discrimination between Pradesh Congress Committee on one hand and the United Front on the other was made and Article 14 of the Constitution of India was thereby—contravened. The purity of election was imperilled. The election of the respondent was materially affected, because there were as many as 32 thousand and odd supplementary voters whom the petitioner could not approach for votes. As such that there was a margin of 33822 votes between the petitioner and the respondent pales into insignificance and his election is liable to be set aside under section 100(1)(d)(iv) of the Act.

73. *Coercion and undue influence.*—In sub-para D of para 7, the petitioner alleges that coercion and undue influence were exercised by the police and hired goondas upon the voters, who were protected by the police, that the said goondas beat up United Front candidates and their workers and terrorised the voters, that the police threatened all those who supported United Front candidates and threatened the Muslim votes in particular that, if they voted for United Front candidates, they would stand the risk of being deported from Tripura and that all this was done in the interest of the congress candidates including the respondent. The petitioner mentioned better particulars of a number of incidents in pages 23 to 27 of the schedule. Out of them the petitioner's Counsel relied on only the following incidents, about which evidence was let in. So, the other incidents alleged in the schedule need not be considered. It was alleged firstly that at about 8 P. M. on 20th January, 1967 when P.W. 13 (Brajendra Chandra Das), a United Front worker of Taranagar was returning from an election meeting through Mohanpur Bazar, he was scaten severely by Amar Sarkar and other congress goondas, that a criminal case was filed against the accused and that subsequently, Amar Sarkar was rewarded after election with a Government job on the recommendation of the Chief Minister. P.W. 13 and 27 are the witnesses who spoke to this incident. P.W. 13 (Brajendra Chandra Das) deposed that when he was coming from a meeting held in Kalagachia on 20th January, 1967 at about 10 P. M. and reached Mohanpur bazar, Amar Sarkar, gave him a hit on his left eye. that P.W. 13 (Brajendra Chandra Das) filed a criminal case C.R. 27 of 1967 in the Court of Shri S. R. Chakraborty the S.D.M., but that no action was taken against the accused, as the accused was a congress worker. In the cross-examination, he stated that P.W. 9 (Nripendra Chakraborty), Sukhomoy Sen Gupta and others delivered speeches in that meeting P.W. 27 (Radharaman Deb Nath) corroborated his evidence. So, there are two eye-witnesses in the case. Ext. X-S is

the file relating to the case. It shows that Shri S. R. Chakraborty examined P.W. 13 (Brajendra Chandra Das) on oath and sent a copy of the complain. on 24th January, 1967 to Shri N. Roy, Circle Officer for enquiry and report by 21st February, 1967. After some adjournments Shri Roy sent a report on 24th April, 1967 stating that he could not contact the complain. P.W. 13 (Brajendra Chandra Das), but that the Circle officer visited the spot and made a local enquiry and found that the complaint had no basis. Shri S. R. Chakraborty acted upon that report that he made some oral enquiries and learnt that the complaint had no basis. This is a very unsatisfactory way of disposal of a criminal case. The Circle officer did not examine any witness and record his statement. He simply stated in his report that he made some oral enquiries and learnt that the complaint had no basis. Shri S. R. Chakraborty should not have acted upon such a report. As there were two eye-witnesses the matter required prompt enquiry and action, so that the election campaign of the petitioner might not be disturbed. The complaint of the petitioner that, because the accused was a congress worker, no action was taken against him, is well founded.

74. Secondly the petitioner alleges that at about 8 P.M. on 26th January 1967 when P.W. 9 (Nripendra Chakraborty) was proceeding to hold an election meeting at Magliband Basti, he was attacked by Haridas Pantati, Mangal Bhakta and other "paid" agents of the congress, that the incident was reported to Shri Benoy Paul, officer in charge of the concerned police station but that no action was taken by P.Ws. 1 (Benu Sen Gupta), 9 (Nripendra Chakraborty), 14 (Chandranath Dev Barma) and 22 (Girindra Chandra Deb) are the witnesses who speak to this incident. P.W. 1 (Benu Sen Gupta) stated that P. W. 9 (Nripendra Chakraborty) filed complaints Exts. A-2297 and A-2298 regarding this incident and some other incidents. But P.W. 1 (Benu Sen Gupta) has no personal knowledge. P.W. 9 (Nripendra Chakraborty) deposed that when he was going to the houses of Shri Mani Orang to hold a meeting in Megliband Basti, about 15 goondas armed with lathis and mostly drunk surrounded him stating that they were cattle lifters and that Shri S. R. Chakraborty ordered the arrest of the cattle lifters, that then P.W. 14 (Chandranath Dev Barma) and two others were present with P.W. 9 (Nripendra Chakraborty), that they were forced to go to Shri Animesh Dutta, Manager of Megliband Tea Estate, that P.W. 9 (Nripendra Chakraborty) represented to him that they were not cattle lifters, but that he had come to hold a meeting in the house of Mani Orang for election work and that then they were let off. It is also the evidence of P.W. 9 (Nripendra Chakraborty) that the goondas were not other than the congress workers, that as the night was a moonlight one, there was no possibility for them to make a mistake about P.W. 9's and others identity and that P.W. 9 (Nripendra Chakraborty) reported the matter as per Ext. A-2298 to the O/C, Sidhat police station, but that no action was taken. In the cross-examination, he was confronted with Ext. B-11, under which his report was referred to P.W. 9 (Nripendra Chakraborty) deposed that no police officer examined him and that he had no knowledge of Ext. B-11. He further stated he made a number of complaints as can be seen from Exts. A-2258, A-2259 and A-2260, but that no investigation was made. The evidence of P.W. 9 (Nripendra Chakraborty) with regard to the above incident is corroborated by that of P.W. 14 (Chandranath Dev Barma) who is an independent witness. He denied being a worker of United Front. It is also supported by the evidence of P.W. 22 (Girindra Chandra Deb). Thus, there appears to be some truth in the allegation of P.W. 9 (Nripendra Chakraborty) that he was man-handled by the congress and prevented from holding a meeting to canvass for votes for the U.F. candidates.

75. The third incident is dated 27th January 1967 when the Flags and festoons were said to have been removed from Mohanpur Election office by congress goondas. There is only the evidence of P.W. 27 (Radharaman Deb Nath) which is hearsay.

76. The fourth incident is that on 29th January 1967 at about 3 P.M. Shri Benoy Paul, Police Officer of Sidhat police station accompanied by R.W. 12 (Prabir Shyam) a congress leader of Simna, raided the house of P.W. 16 (Shri Amulya Datta) a communist worker and took him to Sidhat police station in the jeep of Shri S. R. Chakraborty, P.W. 9 (Nripendra Chakraborty), 16 (Amulya Kumar Datta) and 26 (Birendra Chandra Datta) are the witnesses who speak to this incident P.Ws. 16 (Amulya Kumar Datta) did not file any complaint against the O/C or before his superior authorities P.W. 26 Petitioner has no personal knowledge. R.W. 12 (Prabir Shyam) denied the incident. He is member of the congress of Mohanpur area and stated that he canvassed for votes for the congress candidates. The evidence is equally balanced and it cannot be stated that the incident is proved beyond all reasonable doubt.



77. The fifth incident alleged is that on 5th February 1967 when communist volunteers (Santi Senas) were returning from Agartala rally, they were attacked at night in Mohanpur Bazar by Amar Sarkar, Madhu Das and other congress goondas. P.W. 9 (Nripendra Chakraborty) is the only witness about this incident, who was not corroborated by any other witness. So, this incident has to be ignored.

78. The sixth incident is that of 9th February 1967. It is alleged that the house of Shri Nani Gopal Choudhury, a United Front worker of Ganga Gatipur was surrounded by Amar Sarkar and other congress goondas who threatened to kill P.W. 9 (Nripendra Chakraborty), that P.W. 9 (Nripendra Chakraborty) was protected by the owner of the house and his friends, that the inciding was reported to Shri Benoy Paul, O/C of Sidhal police station, but that he did not take any steps against the accused persons. P.Ws. 9 (Nripendra Chakraborty), 26 (Birendra Chandra Datta) and 27 (Radharaman Deb Nath) are the witnesses about this incident. P.W. 9 (Nripendra Chakraborty) spoke to the incident. This incident was reported in Exts. A-2365(a) and A-2367. But, the incident was referred to by the police under Ext. B-10 as noncognizable. P.W. 9 (Nripendra Chakraborty) stated that he did not know about Ex. B-10 and that he did not challenge it, as he had no confidence in the Administration. P.W. 26 Petitioner has no personal knowledge of the incident. But, P.W. 27 (Radharaman Deb Nath) corroborated P.W. 9 (Nripendra Chakraborty). But in view of Ext. B-10 it cannot be said that the incident is proved.

79. The seventh incident is that of 9th February 1967 when the United Front workers were making propaganda in Krishnanagar area, a gang of congress goondas threw stones upon the squad. This was published in Ext. A-2304 Ganeraj paper. P.Ws. 1 (Benu Sen Gupta), 19 (Atikul Islam) and 26 (Birendra Chandra Datta) are the witnesses who spoke to this incident. Out of them, P.W. 19 (Atikul Islam) is the person, whose workers were alleged to have been stoned. He stated that his workers were in a jeep, that they were stoned in front of the house of Shri Krishnadas Bhattacharjee, that some of them received injuries and that his workers were stoned so that they might be frightened and might not work for him. In the cross-examination, he stated that he was not present when his workers were stoned and that he did not file any complaint. So, none of the witnesses has any personal knowledge and this incident is not proved.

80. The eighth incident is that of 13th February 1967. It was alleged that P.W. 15 Shri Jhunu Das alias Shri Jitendra Das was beaten by the congress goondas in kalabari, that P.W. 15 (Shri Jhunu Das) was a United Front candidate for Belonia Assembly Constituency and that he was treated in the hospital. P.Ws. 1 (Benu Sen Gupta), 8 (Karuna Kumar Roy), 15 (Jitendra Lal Das @ Jhunu Das) and 26 (Birendra Chandra Datta) are the witnesses. P.W. 1 (Benu Sen Gupta) stated that this incident was published in Ext. A-2302 Ganaraj newspaper. P.W. 8 (Karuna Kumar Roy) is an eye-witness and P.W. 15 (Jitendra Chandra Das @ Jhunu Das) is the injured person. Their evidence shows that P.W. 15 (Jitendra Lal Das @ Jhunu Das) was giving a lecture in a mass meeting at Kalabari, that suddenly a batch of congress volunteers came and raised slogans and threw a brick bat against him, that P.W. 15 (Jitendra Lal Das @ Jhunu Das) sustained bleeding injuries and fell unconscious, that after one hour, P.W. 15 (Jitendra Lal Das @ Jhunu Das) regained his consciousness and that he was taken in a jeep to the hospital in Belonia and treated. P.W. 15 (Jitendra Lal Das @ Jhunu Das) stated that he did not file any criminal case or give any information to the police. He attended the Court at the instance of the petitioner's son to give his evidence. P.W. 26 Petitioner has no personal knowledge. Thus, the evidence of P.Ws. 8 (Karuna Kumar Roy) and 15 (Jitendra Lal Das @ Jhunu Das) is cogent and proves the truth of their version. The absence of a complaint to the police or the non-examination of the doctor who treated P.W. 15 (Jitendra Lal Das @ Jhunu Das) does not belie their evidence. So, this incident is proved beyond all reasonable doubt.

81. The ninth incident is that of 14th February 1967. It was alleged that a gang of about 200 congress goondas led by Shri Gopal Das, a congress worker attacked a truck hired by United Front volunteers for election propaganda and that one Shri Monmohan Das was wounded as a result of the attack. P.W. 1 (Benu Sen Gupta) stated that the incident was reported in Ext. A-2303 as a news item. P.W. 32 (Anil Chandra Dey) is the son of Shri Monmohan Dey. He deposed that there was Saraswati Puja on 14th February 1967, that he and his father Monmohan Dey went to Anandanagar market to make some purchase, that they were asked to go in the vehicle of the United Front party, that P.W. 32 (Anil Chandra Dey) got into the vehicle, that a number of congress goondas threw brickbats against

them, that P.W. 32's father received serious injuries and that even now he is seriously ill. He was asked to attend the Court by his son. No doubt, he admitted that he acted for Sukhomony Sen Gupta, a United Front candidate. But, his evidence does not appear to me to be false. The only discrepancy that was pointed out by the respondent's Counsel is that P.W. 32's surname is "Dey" and not "Das" and that Monmohan "Das" referred to in the schedule is different from P.W. 32's father. But, all the particulars mentioned in the schedule are found to be correct with reference to the evidence of P.W. 22 (Girindra Chandra Day) and there is no doubt that it refers to P.W. 32's father.

82. The tenth and the last incident is dated 15th February 1967. The petitioner alleged that at about 5 p.m. on 15th February 1967 a gang of congress goondas led by Shri Krishna Deb Barma, the congress candidate for Charilam Assembly Constituency attacked the election meeting of the United Front held at Golaghati Bazar. P.Ws. 1 (Benu Sen Gupta), 20 (Durga Prasad Sikdar) and 26 petitioner are the petitioner refer to Ext. A-2301 news item about the incident and have no personal knowledge. But, P.W. 20 (Durga Prasad Sikdar) is an eye witness. He deposed that he was the Gram Pradhan of Amtali Gao Sabha, that 3 days prior to the election Shri Ahgore Deb Barma, a candidate of Charilam Assembly Constituency held a meeting in Golaghati bazar, that then his rival candidate Shri Krishna Deb Barma and others attacked him armed with lathis and other things, that his meeting could not proceed and that P.W. 20 (Durga Prasad Sikdar) was present in that meeting. He attended the Court at the instance of the petitioner's son. He denied being a worker of the United Front, though he wanted the success of the petitioner. There is no reason why his evidence should be disbelieved, as it was not rebutted.

88. Thus, the incidents Nos. 1, 2, 8, 9 and 10 are proved. These incidents interfered with the meetings convened by the United Front candidates or workers to canvass for the votes for the petitioner. Thereby there was interference with the free exercise of the electoral rights of the petitioner. There was also undue influence. These acts are covered by section 123(2) of the Act. But, these incidents were indulged in not by the respondent or his election agent but by his workers, who were his agents. The latter indulged in them to further the prospects of the election of the respondent and to prejudicially affect the election of the petitioner. The petitioner's consent to the acts must be presumed, as he did not denounce them. So, the case falls under section 100(1)(d)(ii) of the Act. In such a case the petitioner has to prove that the result of the respondent's election was materially affected. Inasmuch as a member of meetings organised by the United Front were interrupted and undue influence was brought to bear upon the voters and workers of the petitioner and the electoral rights of the petitioner were widely interrupted with, the result of the election of the respondent must be deemed to have been materially affected by the above incidents. The learned Counsel for the respondent, however, contended that they were all stray incidents, that they were bound to occur in every election and that the election was not affected unless the violation was so very great that the polls were interrupted. He relied on the passages at pages 526 and 530 of Volume II of Doabia's Election Manual 1967 edition. But, in this case the interference had been so great and wide spread that it can be fairly said that there was no free elections. The incidents show that there was undue influence into the free exercise of the petitioner's electoral rights. This is not a case where there were some stray cases. The respondent who had the benefit of such incidents cannot now state that they had taken place without his knowledge or consent or contrary to the instructions given by him. He did not denounce them.

84. *Leaflets and Speeches.*—In paragraphs 7-C and 9-E, the petitioner alleges that the respondent, his election agent and the congress party in the interest of all the congress candidates including the respondent issued leaflets and made speeches, that the United Front candidates were the enemies of the Bengalees, that they also promoted sentiments and feelings of hatred between the Bengalees and the tribals, that some of the members of the communist party were being prosecuted in Courts on certain charges, but that though they were not yet found guilty, yet the members of the communist party of India (M) were alleged to have committed murders and that thereby they tried to influence the voters unduly into not voting for any candidates including the petitioner set up by the communist party of India (Marxist). The petitioner also alleges that the leaflets and pamphlets were printed in Agartala Sen Printing Works, Chhapaghar and Srigoinda Press by the Provincial Congress Committee, Tripura and that they were distributed among the voters of Tripura West Parliamentary Constituency. Better particulars were furnished at pages 17 to 23 of the schedule. The petitioner's counsel concentrated his attention on the pamphlets and the speeches in this case. Exts. A-2289, A-2290 and A-2291 are printed pamphlets of which

printed copies were said to have been distributed. Ext. A-2289 was printed at Chhapaghar by Shri Bonode Behari Chakraborty on behalf of the Tripura Pradesh Congress Committee. It is in Bengali language. It is headed by a question put to the petitioner, P.W. 9 (Nripendra Chakraborty) and Shri Dasartha Dev Barma and they were asked to give their answers to the questions therein. Both the parties filed two translations of the leaflets. The translation of the relevant paras of Ext. A-2289, according to the respondent, runs thus.

"(1) Having won the election by the votes of the people of Tripura for the last 10/15 years have they ever made a single speech on any matter of importance to Tripura? If they have, in which newspaper, of what date has it been published?

If not, what will they be able to accomplish in the future as well, by raising their hands like dummies against the Government at the bidding of party which is less than a tenth in a House of 521 Members?

(2) China, having attacked India like traitors, is sitting up on 14500 sq. miles of Indian territory after occupation. And having made an attack in N.E.F.A. they have killed thousands of our jawans (soldiers) as these latter were caught unprepared. Then, in spite of taking big (of generosity of a unilateral withdrawal), they withdrew because they discovered no chance of running a Government with the help of the Left Communists.

What is the reason of the above mentioned gentleman for not calling such a China as aggressor?

(3) China attacked us by taking advantage of our faith in "Hindi-China Bhai Bhai". And Pakistan has been born with enmity of India (in its blood). Now these two enemies of India together are making preparations in East Pakistan to the Foreign attack India—and particularly to grab Tripura, Mr. Bhutto, the Foreign Minister of Pakistan, has said—"As Tripura is surrounded on three sides by Pakistan, we must have it". (Organiser, Delhi, dated 23rd October 1966); and those who without any provocation shoot at Belonia have said in a Conference of compromise ('cease fire') "If you surrender a part of Belonia to Pakistan, we can arrive at a compromise". (Sevak, Agartala, 18th December, 1966).

What is the opinion of the above mentioned gentlemen in this matter?

(4) China has helped Pakistan with the supply of MIG 19 Planes, Tanks, guns, ammunitions etc. and training its (Pak) soldiers. On top of this, they are taking the Mizos (Lushai), Nagas and all those Indian rebels against the Govt. of India, batch by batch, through surreptitious ways and, having given them (military) training, are sending them back to Mizo and Nagaland in order to fight the Indian army-men. Sri Nripendra Chakraborty has openly hailed this kind of treason in an open meeting.

Pakistan has been in occupation of a third of Kashmir. The part of that (occupied) Kashmir which we re-occupied particularly, the Haji pir Path—was given back by us (to Pakistan) in accordance with the Taskent Agreement. Even so they are behaving as enemies to us. Yet those China—follower Communists are telling us "come to terms with Pakistan and China", instead of deprecating this kind of anti-Indian friendship.

Will these gentlemen tell us how much more of Indian Territory is to be surrendered, in addition to what they have grabbed, in order it may lead to a compromise?

And, will this be the last compromise? Yet they (these gentlemen) are saying why India does not save Rs. 800 crores of Defence Budget every year by compromising with Pakistan and China. If India did that for how many days (after the compromise) will Tripura remain in India?

(5) Pakistan is a land of autocracy. Why do they (the above-mentioned people) not call it "imperialism" (of China) to make friends with Pakistan and equipping her with armaments to fight India? By spending Rs. 800 crores as military expenditure every year we are somehow deterring them (from attacking us). Is that also a crime?

(6) The above-mentioned gentlemen raised the cry of 'no more land in Tripura for refugees', after only about three or four lakhs had entered Tripura. Now there are about 10 or 12 lakhs of them. How has place been found for all of them?

(7) Sri Dasarath Deb Varma, Sri Biren Datta, in Parliament, and others in Tripura Legislative Assembly submitted proposals that out of the area of 4113 sq. miles of Tripura, 1910 sq. miles, i.e. Khowai, Kamalpur, Kailasahar, Amarpur and Sabroom should be declared as "Tribal Areas" according to the Fifth Schedule of the Indian Constitution. (Vide Nripen Babu's article printed in newspaper, and the proceedings of the Tripura Legislative Assembly). *This will mean that all those Bengalee refugees who have been rehabilitated in those places will have to leave those places and come away, because in "Tribal Areas" none except Tribals may hold rights over land.*

This will have three results:—

(a) To create conflict between Bengalees and the Tribals who will remain in the other parts (4116-1910)-2206 sq. miles (of Tripura) e.g. Sadar Sub-Division. But now we are living here as neighbours to each other.

(b) If out of those 1910 sq. miles more than three lakhs of refugees come evicted for a second time then in the remaining 2206 sq. miles (of which 680 sq. miles are reserved forest) the 12 lakhs of Bengalees out of the population of 15 lakhs, shall have not even standing room housing being out of the question. Yet there is no other place to go to for Tripura has Pakistan on three sides and the rebel Mizos on the East. Then will begin a confusion (Anarchy) within this 2206 sq. miles of Tripura taking advantage of which Pakistan will swallow Tripura. *Even if she does not, this will be grave-yard of Bengalis—particularly of the refugees.*

(c) Dharmanager Sub-Division will be detached from the Western region of Tripura. *For Dasarath Babu it may be possible to become a lord of the Tribal Area and join with the proposed Hill State Federation or the Mizos.*

*But being themselves Bengalis, why have Nripen Babu and Biren Babu been enthused with this proposal for the ruination of the Bengalis?*

Is it inevitable that Tripura should be divided into three parts?

(8) Has Right communist leader Mr. Dange written in the papers that the Left Communists are receiving money from China (through Pakistan at present as Chinese Banks have been closed in India)?

(9) Did the Communists call Netaji Subash a quisling i.e. a traitor?

(10) At the time of the quit India movement of Mahatma Gandhi (1942), did the Communists get some of the underground workers arrested and get them hanged? Then follows paragraph 11 in which the names of 17 persons were mentioned, said to have been murdered by the communists.

85. Ext. A-2290 was got printed and published by Shri Sumanta Roy by the Diamond Press on behalf of the Tripura Juba Congress Committee. As stated by P.W. 9 (Nripendra Chakraborty) this pamphlet is his "character assassination" devoted against his political and private character and life.

86. Ext. A-2291 is a printed pictorial leaflet printed and published by Shri Ajoy Roy on behalf of the Pradesh Congress Publicity Board in the Sen Printing Works, Agartala. It contains photo of the dead body of one Bhuban Dev Barma and a photo of his family members. It was mentioned that at one time Bhuban Dev Barma was a devoted Congress worker and that he was mercilessly murdered by the political terrorists of Tripura and that his family stood before the people of Tripura demanding justice. Then the pamphlet proceeds to state that the communist terror in Tripura is of long duration, that the communists converted others to communism by force, that the—communists evicted the Bengalee refugees, burnt to cinders their houses and buried those who insisted, alive. Then it contains a photo of the dead body of Narayan Dev Barma, said to have been traced in the interior of a jungle. It was mentioned that the communists murdered him and buried him in the jungles, because he left the communist party after the attack of China on India and joined the Congress and that the police unearthed his dead body from under the ground. Then the pamphlet contains photos of the dead bodies and refers to communists terrorist activities in Kerala and elsewhere. The people were asked to give their verdict whether democracy or terrorism should be the permanent system in Tripura.

87. Though the publishers and the printers were not examined by the petitioner (could not be as they belong to the Congress party), the petitioner adduced a huge volume of evidence to show that the pamphlets were widely distributed in the Tripura West Parliamentary Constituency by the Congress workers and agents of

the respondent, by R.W. 7 (Satyendra Kumar Dutta Choudhury) the respondent's election agent and in some places and in some meetings at the instance of and on the directions of the respondent. P.W. 1 (Benu Sen Gupta), the election agent of the petitioner stated that the Press in Chhapagarh, which printed Ext. A-2289 pamphlets, was owned by Shrimati Renu Chakraborty, a Congress worker and a nominated Congress M.L.A. He stated in the cross-examination that he got a copy of Ext. A-2289 from R.W. 7 (Satyendra Kumar Dutta Choudhury) who was distributing the pamphlets before the election took place. P.W. 2 (Kanu Sen Gupta) deposed that copies of Ext. A-2289 were distributed by Shri Krishnadas Bhattacharjee, a candidate for the Congress and by Shri Bijan Ghosh and others in the first week of February, 1967. He further stated that R.W. 7 (Satyendra Chandra Datta Choudhury) distributed a copy of Ext. A-2291 to him in the first week of February, 1967, when he canvassed for votes for the respondent P.W. 2 (Kanu Sen Gupta) is the full brother of P.W. 1 (Benu Sen Gupta), P.W. 3 (Hemendra Chandra Banik) is a shop keeper in Joynagar in Agartala. He stated that he got a copy of Ext. A-2291 from some Congress workers who were distributing the pamphlets near a banian tree at Battala at about 7 or 8 P.M. and a copy of Ext. A-2289 near the paradise Choumohini when the pamphlets were distributed by the Congress workers. He attended the court at the instance of the petitioner. Though he does not know the persons who distributed the pamphlets, he swore that they were all Congress workers. P.W. 4 (Kumud Rajan Basu) is a resident of the Jirania. His evidence is that, on 16th February, 1967, which was a shandy day in Jirania, the respondent and R.W. 16 (Sneha Kumar Chakma) held a meeting, that in the meeting copies of Ext. A-2289 and A-2291 were distributed and that the respondent and R.W. 16 (Sneha Kumar Chakma) make speeches in the meeting. He denied being a communist party worker P.W. 5 is Sudhir Deb. His evidence is that about 8 or 10 days prior to the election, he saw a gathering in Battala and went to the gathering and that he found an aged person distributing pamphlets, that he took the pamphlets from him and that they were printed copies of Exts. A-2289 and A-2291. He is a private tutor and is not a member of the communist party. But, he was a worker of the United Front of the petitioner. P.W. 6 (Saroj Chandra) was a candidate from Agartala Sadar II Assembly Constituency set up by the United Front. His evidence is that in the election days he came across a good number of pamphlets distributed by the Congress workers and that Exts. A-2289 and A-2291 are copies of the said pamphlets. He further deposed that about 6 or 7 days prior to the election he saw Shri Tipu Singh, a relation of Shri S. L. Singh distributing the pamphlets in Badharghat in Agartala Sadar II Constituency and that Shri Tipu Singh gave him copies of Exts. A-2289 and A-2291. P.W. 7 (Abhiram Dev Barma) stood for election from Uttar Debendranagar Assembly—Constituency and succeeded. His evidence is that he saw the respondent in Jirania 7 or 8 days prior to the election speaking through a mike and canvassing for votes for him, stating that if the voters voted in favour of the communists, the Bengalees would not be able to stay in Tripura. He stated that a pamphlet was given to him by Shri Khagesh Acherjee, a congress worker about 3 or 4 days prior to the election and that one Mani Dev Barma, a congress worker gave him a copy of Ext. A-2291 one day prior to the election P.W. 8 is Karun Kumar Roy. He deposed that about one week prior to the election there was a meeting in Belonia Kalibari wherein the respondent gave a lecture, that Shri U.K. Roy was the President of the meeting, that Shri S. L. Singh and others gave their lectures and that Shri Suresh Babu handed over a copy of Ext. A-2291, while R.W. 7 (Satyendra Kumar Datta Choudhury) gave him a copy of—Ext. A-2289. He worked on behalf of the communist party and also the United Front. P.W. 9 (Nripendra Chakraborty) also spoke to having seen the pamphlets. P.W. 10 (Chandra Mohan Saha) is a resident of Sadhutula. His evidence is that there was a meeting in Dukli Bazar on the 24th of Magh at 2-30 P.M. that Shri S. L. Singh and the respondent delivered speeches, that the respondent showed a map of Tripura and that the congress volunteers distributed copies of Exts. A-2289 and A-2291 in the meeting. P.W. 11 (Dakshina Ranjan Chakraborty) is a resident of Gopalnagar colony. His evidence is that there was a meeting in Mohan Bazar presided by one Shri Nafarat Deb Barma, that the respondent, R.W. 16 (Sneha Kumar Chakma) and Shri Promode Das Gupta delivered lectures in the meeting and that copies of Exts. A-2289, A-2290 and A-2291 were distributed in the meeting. P.W. 13 is Brojendra Chandra Das. He deposed that he is a workers of the United Front and that copies of Ext. A-2289 and A-2291 were given to him by one Shri Gouranga Sil in the Mohanpur market. P.W. 14 is Chandranath Dev Barma. He deposed that in the morning of the next day, after a meeting in Katlamara Primary School premises was addressed by Shri S. L. Singh, pamphlets similar to Exts. A-2289 and A-2291 were distributed by Shri Rakhal Das Gunta. P.W. 15 (Jitendra Lal Das @ Jhunu Das) contested from Belonia Assembly Constituency on behalf of the United Front party. His evidence is that the respondent addressed a meeting in Belonia at Kalibari about

7 or 8 days prior to the election and exhibited two pamphlets—copies of Exts. A-2289 and A-2291 in the meeting and that he got them distributed. P.W. 16 is Amulya Kumar Dutta. He stated that pamphlets similar to Exts. A-2289 to A-2291 were distributed in the Mantala colony by Shri Usha Choudhury and some other congress workers of the colony on 25th Magh, 1373 B.S. He is not a communist party worker. P.W. 17 is Akul Chand Datta. He stated that there was meeting on 25th Magh, 1373 B. S. at 5 P.M. at Mantala colony, that it was addressed by Shri Promode Das Gupta, that some leaflets were distributed in the meeting and that Ext. A-2289 is a copy of the same. He attended the Court on information given by his brother P.W. 16 (Amulya Kumar Dutta). He is not a United Front worker. P.W. 18 is a resident of Meghliband. His evidence is that there was meeting in Katlamara Primary School premises 4 or 5 days prior to the election, that the meeting was addressed by Shri S. L. Singh, Shri Promode Das Gupta and others and that copies of Ext. A-2289 and A-2290 were distributed in the meeting. Exts. X-1 and X-2 are the copies received by him and he produced them into the Court. He swore that the pamphlets were distributed by one Arabinda Gupta, a congress worker, in the meeting. P.W. 19 (Atikul Islam) contested from the Agartala town Assembly Constituency on the United Front ticket. It is his evidence that a congress worker Shri Bijan Ghosh distributed pamphlets as per Exts. A-2289 and A-2291 on 5th February 1967 at Kaman Ghoumohani at about 6 or 7 P.M. P.W. 2 (Durga Prasad Sikdar) is the Gram Pradhan or Amtali Gao Sabha. It is his evidence that 10 days prior to the election one Asutosh Naha, a congress worker of Shri Krishana Dev Barma, who was a congress candidate, distributed pamphlets similar to Exts. A-2289 and A-2291. P.W. 21 (Gopal Chandra Chakraborty) is a resident of Arundhutinagar. His evidence shows that he found some people including Shri Tipu Singh, who were all congress workers—distributing the pamphlets near the congress office in Agartala, when he got two copies of Exts. A-2289 and A-2291. P.W. 22 (Girindra Chandra Deb) is a resident of Ishanpur. He stated that about 2 days prior to the election he got copies of Exts. A-2289 and A-2290 in Katlamara Bazar from one Gnan Chandra Paul, who was previously a communist party worker and who is now a congress party worker and stated further that the latter worked in the office of Shri Promode Das Gupta, a congress candidate. P.W. 23 is Haran Chandra Choudhury. He is a resident of Kakraban. It is his evidence that the respondent held a meeting at Kakraban Bazar about 8 days prior to the election and that one Shri Bishu Das, a congress worker distributed the pamphlets and that they were copies of Exts. A-2289 and A-2291. P.W. 24 is Harendra Chandra Deb Roy. It is his evidence that he is working as an assistant in a sweet-meat shop which is about 20 cubits from the shop of Shri Govinda Majumdar in Mohanpur Bazar, that the respondent came to the shop, that many people assembled, that one Amar Sarkar brought three pamphlets similar to Exts. A-2289 to A-2291 and gave them to P.W. 24 (Harendra Chandra Deb Roy) and that the respondent took his seat and also distributed the pamphlets. He was asked by the petitioner about 20 or 25 days prior to the date of his deposition to give his evidence and so, he attended the Court. P.W. 25 (Lalit Mohan Ghosh) is a resident of Amtali. It is his evidence that Shri S. L. Singh and the respondent addressed a meeting in Bishalgarh at about 3 P.M. 8 or 9 days prior to the election, that in that meeting copies of Exts. A-2289 and A-2291 were distributed by Shri Makhan Saha, congress worker. It is also his evidence that about 10 or 11 days prior to the election he attended a meeting in Dukli, that in that meeting also the respondent, Shri S. L. Singh and others delivered speeches and that pamphlets similar to Exts. A-2289 and A-2291 were distributed. He attended the Court at the instance of the petitioner's son. P.W. 26 is the petitioner who stated that he received a copy of Ext. A-2289 from P.W. 5 (Sudhir Deb) along with another pamphlet which was a copy of Ext. A-2291. He further deposed that, afterwards, R.W. 7 (Satyendra Kumar Dutta Choudhury) handed over to him copies of Exts. A-2289 and A-2290 and A-2291 and Ext. X-2 near the Fire Brigade at Agartala at about 10 P.M. prior to the election, that R.W. 7 (Satyendra Kumar Dutta Choudhury) further told P.W. 26 petitioner jokingly that the pamphlets as per Ext. A-2290 were exhausted like hot cakes, that they had to be reprinted as per Ext. X-2 and that though R.W. 7 (Satyendra Kumar Dutta Choudhury) was the friend of P.W. 26 petitioner he would tell P.W. 26 petitioner that the latter would be defeated in the election. P.W. 27 (Radharaman Deb Nath) was the election agent of P.W. 9 (Nripendra Chakraborty). It is his evidence that about 15 or 16 days prior to the election the respondent went to the house of Shri Govinda Majumdar in Mohanpur Bazar and held a group meeting and distributed some pamphlets similar to Exts. A-2289, A-2290 and A-2291. Also it is his evidence that there was a meeting in Mohanpur Rice market about 10 or 12 days prior to the election where the respondent, R.W. 16 (Sneha Kumar Ghakma) and Promode Das Gupta delivered speeches, that pamphlets similar to Exts. A-2289 to A-2291 were distributed and that they were also pasted on the

shop and the trees. P.W. 28 (Phani Majumdar) is a resident of Aralia in Sonamura. His evidence is that on 10th February 1967 the congress held a meeting in Kathalia, that Shri S. L. Singh the respondent and others addressed the meeting, that he found two sets of pamphlets on the table where the respondent sat, that the respondent asked his workers to distribute them, that one Kamal Das and one Mr. Bhuttu distributed them that P.W. 28 (Phani Majumdar) got both the pamphlets and that they were copies of Exts A-2289 and A-2291. He attended the Court at the instance of the son of the petitioner. He is a United Front supporter. P.W. 29 (Dhirendra Kumar Sen) was a candidate from Sonamura North Assembly Constituency. But, he has no personal knowledge about the distribution of the pamphlets, as he was told about them by one of his volunteers. P.W. 30 is Shri Samar Bakshi Choudhury. His evidence is that a meeting was held by the respondent, R.W. 16 (Sneha Kumar Ghakma) and others near the Kali temple in Melaghar, that he saw a number of pamphlets on a table in front of the respondent and that one Sukumar Saha and others distributed the pamphlets. He also spoke to the distribution of the pamphlets in some other meeting and deposed that they were similar to Ext. A-2291. P.W. 31 is Shri Nagendra Dev. It is his evidence that about 11 or 12 days prior to the election he received two leaflets from a congress worker in Madhupur Bazar of Bishalgarh area and that they were copies of Ext. A-2289 and A-2291. He further stated that the persons who distributed the leaflets were two congress workers Dhirendra Choudhury and Sunil Bardhan. P.W. 31 (Nagendra Dev) is now under detention under the P.D. Act. He was United Front worker. P.W. 32 (Anil Chandra Dey) is a resident of Malayanagar. It is his evidence that, about 10 or 12 days prior to the election, a meeting was held in the house of Nirmal Deb, a clerk of M.B.B. College in Jogendra Nagar, that the respondent, Tarit Das Gupta and Kartik Bhattacharjee gave speeches, that the respondent distributed some pamphlets, that P.W. 32 (Anil Chandra Dey) took one of them and that Ext. A-2291 is a copy of it. He is also a United Front worker.

88. As against the above evidence, R.W. 1 (J. K. Choudhury) stated that he did not know anything about the pamphlets and denied having either got them distributed or having himself distributed them. He stated that the distribution of pamphlets in a meeting would disturb the meeting. R.W. 7 (Satyendra Kumar Dutta Choudhury) the election agent of the respondent denied knowledge of the pamphlets and having distributed them to P.Ws 1 (Benu Sen Gupta) 2 (Kanu Sen Gupta) and 26 petitioner. He denied having told, P.W. 26 (Birendra Chandra Datta) that the pamphlets as per Ex. A-2290 were exhausted like hot cakes. R.W. 10 (Govinda Chandra Majumdar) denied distribution of the pamphlets. He is associated with the congress. R.W. 12 (Prabir Shyam) denied having seen any pamphlet similar to Exts. A-2289 to A-2291. He is a member of the congress of the Mohanpur area and canvassed for votes for the congress candidates including Promode Das Gupta. R.W. 16 (Sneha Kumar Chakma) denied having seen pamphlets similar to Exts. A-2289 to A-2291 in the election time and deposed that he saw them for the first time in the Court. Though he was formerly opposed to the congress, he joined it.

89. In view of the overwhelming and voluminous evidence let in by the petitioner about the distribution of the pamphlets, it is not possible to believe the evidence of R.Ws 1 respondent, 7 (Satyendra Kumar Dutta Choudhury), 10 (Govind Chandra Majumdar), 12 (Prabir Shyam) and 16 (Sneha Kumar Chakma) that they know nothing of the pamphlets. It is not necessary to prove the authorship of the pamphlets. As distribution of the pamphlets by the respondent, his election agent and his workers is proved, he is responsible for the statements contained in the pamphlets. Vide *Nani Gopal Swami Vs. Abdul Hamid Choudhury and another* (A.I.R. 1959 Assam 200) and *Maganlal Radhakrishnan Bagdi Vs. Hari Vishnu Kamath* (A.I.R. 1960 M.P. 362). Before considering the legal effect of these pamphlets, it has to be noted that the petitioner referred to only three Presses in paragraph 7C of his petition which printed the pamphlets. They are Agartala Sen Printing Works, Chhapaghar and Sri Govinda Press. Ext. A-2289 pamphlet was printed in Chhapaghar, Agartala Press, but, Ext. A-2290 was printed in the Diamond Press. So, it is a new item and has to be ignored. Ext. A-2291 was printed in the Sen Printing Works. As such, the effect of Exts. A-2289 and A-2291 has to be considered. Before dealing with them a poster marked as Ext. A-2354 may be also referred to in this connection. In that poster the voters were asked to vote in favour of "Principal J. K. Choudhury". The contention of the petitioner is that the respondent retired as Principal several years back and that he appended the word "Principal" to his name in the election propaganda to attract the attention of the students. The evidence of R.W. 1 respondent is that he applied to the Electoral authorities to score out the word "Principal" in his nomination paper. Yet, the word was not scored out from the

posters. According to R.W. 1 respondent it was only a honourific term. The respondent's Counsel relied on *Chunilal Ken Vs. Radhcharan Sharma and others* (21 E.L.R. 320) where a leaflet was published by the congress party with the photo of an ex-Maharaja, appealing by him to his subjects to vote for the congress party. The ex-Maharaja was described as "Maharaja" and his photo contained his regal robes. It was held that his appeal could not amount to undue influence and gradulent device interfering with the free exercise of the rights, of the voters. So, Ext. A-2354 poster also may be ignored. Though it is seen from the evidence. of P.Ws 6 (Saroj Chandra), 19 (Atikul Islam) and 26 petitioner that the communist party had also its own organs called Deshudhar people's Democracy and Tripura Katha and though Shri Sukhomony Sen Gupta ran Ganaraj, the communist party did not print counter leaflets in answer to Exts. A-2289 and A-2291. But, P.W. 9 (Nripendra Chakraborty) and 26 petitioner stated that they denounced the propaganda of the congress party in their speeches. I do not think that omission of the petitioner to print and publish counter pamphlets and to wage war against this pamphlets detracts against the contentions raised by him in the petition.

90. The petitioner mentioned in detail the speeches delivered by the respondent and others on various dates. Most of them were in accordance with the pamphlets and the themes were the same. Evidence was let in about those speeches. Firstly, it was alleged that on 31st January 1967 there was a public meeting in Katlamara in Mohanpur Constituency, where Shri S. L. Singh stated that the communists murdered Kiran Bhattacharjee and Ban Behari and spread feelings of hatred. P.W. 14 (Chandranath Dev Barma) and 18 (Debendra Chandra Deb) are the witnesses who speak to this speech. Ext. A-2294 is the news item published in Rudura Bina dated 3rd February 1967. Secondly, there is the evidence of P.Ws 1 (Benu Sen Gupta), 2 (Kanu Sen Gupta), 10, (Chandra Mohan Saha), 25 (Lalit Mohan Gosh) and 26 petitioner about a meeting held in Kukli on 7th February 1967 wherein Shri S. L. Singh and others delivered lectures alleging that the communists murdered Govinda Gosh and Ananta Bhattacharjee. P.Ws 1 (Benu Sen Gupta), 2 (Kanu Sen Gupta), 10 (Chandra Mohan Saha), 25 (Lalit Mohan Gosh) and 26 (petitioner) are the witnesses who spoke to that speech. This was published in Ext. A-2296 Jagaran paper. Thirdly, on 9th February 1967 there was a meeting in Bishalgarh in which speeches were delivered creating feelings of hatred and in which it was alleged that the communists murdered Dukhi Goala and Mangal Deb Barma. P.Ws 2 (Kanu Sen Gupta) and 26 petitioner are the witness who speak to the speeches as reported in Ext. A-2357 news item in daily Jagaran paper. Fourthly, it was alleged that there was a meeting on 9th February 1967 in Bishalgarh where Shri S. L. Singh spoke creating feelings of hatred between the different communities calling the people of scheduled caste community as insects of drain. This was published in Ext. A-2295 Ganaraj paper dated 12th February 1967 P.Ws (Benu Sen Gupta), 2 (Kanu Sen Gupta), 25, (Lalit Mohan Ghosh) and 31 (Nagendra Dev) speak to it. Fifthly, it was alleged that on 9th February 1967 Shri S. L. Singh and the respondent made speeches in Bishalgarh spreading feelings of hatred between the Bangalees and the tribals. P.Ws 1 (Benu Sen Gupta), 2 (Kanu Sen Gupta), 25 (Lalit Mohan Ghosh) and petitioner are to witnesses who were examined to speak to their speeches. Ext. A-2293 contains this news item, in Dainik Gana Abhijan dated 10th February 1967. Sixthly, it was alleged that on 12th February 1967 the respondent addressed a public gathering in Kakraban spreading communal hatred P.Ws 1 (Benu Sen Gupta) 2 (Kanu Sen Gupta), 23 (Haran Chandra Choudhury) and 26 (Petitioner) are the witnesses who speak to this Ext. A-2292 is the news item published in Jagaran. As pointed out in *Brish Misra Vs. Ram Nath Sharma* (17 E.L.R. 243) to prove a corrupt practice it is necessary to establish as to what was actually stated in a meeting oral evidence should be viewed with care and caution. Without the entire context of the speech being placed before the Court, isolated works cannot give a true import of the speech and no corrupt practice can be said to have been proved on the basis of that. Out of all the speeches R.W. 1 (J. K. Choudhury)—admitted that Ext. A-2292 is substantially correct. It is a short one and the translated speech is reproduced as hereunder.

"Principal Shri Jogendra Kumar Choudhury, congress candidate for the General Parliamentary Seat in connection with his lecture delivered yesterday, in a large public meeting held at Kakraban under Udaipur Sub-division, said that the communist party of Tripura people. As an outcome of their resolution to bifurcate Tripura in the name of development of the tribals, at least more than five lakhs of uprooted refugees would again be turned into refugees. This situation in the critical life of the Bengalees is undesirable.



Shri Choudhury added that the communist party has because cornered to-day. So they are trying to take shelter in a narrower Tripura rather than the wider Tripura. They have taken the recourse of communalism to infuse new life to the decaying party. On the other hand, the basic principle of the National Congress is the formation of non-communal State. He appealed to the people to make the National Congress Victorious by casting their votes in its favour in the ensuing election in the interest of upkeeping the integrity and communal harmony of Tripura". (under lining is mine).

91. Now the intention of the respondent in distributing and getting distributed Ext. A-2289 and A-2291 and in making a speech as per Ext. A-2292 has to be gathered. The main items contained therein can be classified into three categories. The first category is that relating to the attitude of the communist party of India or C. P. I. (M) towards China and Pakistan. This is contained in paragraphs 2 to 5 of Ext. A-2289. They show that China is in possession of 14500 sq. miles of Indian territory after having attacked India, that China helps Pakistan, that Pakistan is in occupation of one-third of Kashmir including Hajipur Path and that yet, the C. P. I. does not denounce China and Pakistan as aggressors. Even in the evidence P.Ws. 6 (Saroj Chanda), 9 (Nripendra Chakraborty) and 26 (Petitioner) were reluctant to admit that China and Pakistan were the aggressors. As against this it was pointed out that though America was favourably disposed towards Pakistan by supplying Patton tanks to it, India did not criticise America, but that, on the other hand it is getting food under PL 480 programme. These are all matters relating to party politics and policies with which the Court is not concerned. So, there is nothing wrong in the statements contained in paragraphs 2 to 5 of Ext. A-2289. The second category is that the communist party members murdered Bhuban Dev Barma, Narayan Dev Barma and others, because they belonged to the congress party. It is in the evidence of P.W. 1 (Benu Sen Gupta) that the accused, who were communist party members in Bhuban Dev Barma's case, were discharged even by the committing magistrate. It is said that some case against some persons is pending in connection with the death of Narayan Dev Barma. P.W. 9 (Nripendra Chakraborty) stated that the photos of the dead persons, which were published in Ext. A-2291, must have been made available to Shri S. L. Singh by the police as the case was sub-judice and as nobody else could get at the photos of the dead bodies. Though R.W. 1 (Respondent) denied that he or Shri S. L. Singh spoke in the meetings stating that the communist party members murdered—Bhuban Dev Barma and others, he admitted in his cross-examination that one of the local speakers who gave a lecture on the same platform stated that the communist party members committed the murders. Thus, it is correct to state that the congress-party, of which the respondent is member, was not justified in publishing news that the above mentioned Bhuban Dev Barma and Narayan Dev Barma were murdered by the communist party members. Perhaps, it would also amount to contempt of Court because the case regarding Narayan Dev Barma is sub-judice. It has to be noted in this connection that P.W. 9 (Nripendra Chakraborty) alleged that the congress party members murdered some students in 1966 in Agartala as published in Ext. B 21 news item in Desher Dak. This is now sub-judice and is being enquired into by one Shri Bakshi, a retired Judge of the Sourashtra High Court. Thus, there were allegations and counter allegations about the murder. In a number of cases it was held that matters of opinion expressed against a party do not come under corrupt practice within the meaning of section 123 of the Act. A statement that "not to vote for the congress" would be like committing betrayal, was held to be a mere expression of opinion and is not covered in section 123(2) of the Act. *Vide* Brish Misra Vs. Ram Nath Sharma (17E. L.R. 243). In a case voters were asked not to vote for the congress candidates, as the congress was responsible for firing and killing Maharashtra leaders, for demanding a separate State and photos of the martyrs were attached to the appeal. It was also stated in the pamphlets that the ballot boxes of the congress party were filled with the blood of those martyrs. This was held to be not a corrupt practice. *Vide* Kataria Takandas Vs. Pinto Frederic Michael (18 E.L.R. 403) False Statement against political parties and appeal on the ground of that mis-deeds or their supposed mis-deeds were held not to be corrupt practices. *Vide* the rulings mentioned at pages 530, 533, 544 and 545 of Doabia's Election Manual, Volume II, 1967 Edition. Severe criticism of a party was held to be not corrupt practice. *Vide* pages 78 and 79, of Volume II of Digest of the Election Law Report from 1955-60. So, the allegations made in Ext. A-2291 and the speeches that the communist party members murdered the congress party members or workers cannot also be said to be a corrupt practice.

92. The third item is material for the purpose of this case and in the context of the atmosphere and circumstances prevailing in Tripura. This was mentioned

in paragraph 7 and further stressed by the respondent in his speech as per Ext. A-2292. Tripura is surrounded by East Pakistan on three sides and by Mizo Hills on the fourth. Tripura was ruled by the then Maharaja who was a tribal. In 1951, the population in Tripura was 6,45,70 and the tribals were 2,37,953, and their percentage was 36.35. In 1961, according to the Census, population was 11,41,764, of which the scheduled tribes' population was 3,61,751 i.e. 31.68 per cent. The area of Tripura is 4116 sq. miles. The members of the scheduled tribes belong to 13 different tribes, Tripuris, Reang, Nottia, Halam, Jamatia and Chakma are the majors tribes. Vide Ext. A-2364 (a). On account of the influx of the refugees from East Pakistan in 1967, the total population in Tripura inflated to about 15 or 16 lakhs. So, at the time of the election about 20 per cent of the population was of scheduled tribes and 80 per cent was Bengalee refugees, who migrated from East Pakistan. The communist party of Tripura had been agitating for the introduction of Schedule V of the Constitution of India in Tripura. The system of administration provided for the Scheduled areas and Tribes as provided in Parts A and B of the fifth schedule may be summarised thus: The executive power of the Union shall be extended to giving directives to the States regarding the administration of the Scheduled Areas. Tribes Advisory Councils are to be constituted to give advice on such matters as welfare and advancement of the Scheduled Tribes in the States as may be referred to them by the Governor or Ruler. The Governor or Ruler is authorised to direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or shall apply, only subject to exceptions or modifications. The Governor or Ruler is also authorised to make regulations to prohibit or restrict the transfer of land by, or among members of, the Scheduled Tribes, regulate the allotment of land, and regulate the business of moneylending. All such regulations made by the Governor or Ruler must have assent of the President. (Vide page 670 of Besu's shorter constitution of India, 1960 edition), Shri Dhebar's Commission was appointed to investigate and report on the problems of the Scheduled Tribes. The Commission submitted a report Ext. A-2364 to the President. Ext. A-2364(a) refers to Tripura, wherein the Commission stated that at the time of the enquiry by the Commission on Scheduled area in Tripura was notified that the then Chief Commissioner of Tripura (Shri Patnaik) suggested that the areas of Kanchanpur, Chaumanu, Amarapur and Tellamura Blocks and some of the areas under Sadar, Belonia and Sabroom Sub-divisions, which are contiguous to Amarapur and Tellamura Blocks and have a preponderance of tribal population, might be declared as Scheduled Areas." The Commission suggested, alternatively, that the tribal areas stated above should be grouped under Tribal—Development Blocks, so that the bulk of the tribal population is brought under intensive development programme. The Commission also stated that the influx of displaced persons from Pakistan to Tripura has been enormous and has upset the local economy, that it has greatly affected the tribals and has made the land problem acute, that the rights of the tribals to land should be safeguarded and that though section 187 of the Tripura Land Revenue and Land Reforms Act—(introduced by then) prohibits transfer of land from tribals to non-tribals unless the written permission of the Collector is obtained, this may check alienation of land by the tribals, but that in many cases, the land changes hands without any deed of registration. As can be seen from Ext. A-2364 (h) the Commission suggested that jhuming should be permitted wherever possible, that Jhum cultivation on scientific basis should be introduced, that on account of influx of refugees, the pressure on land in Tripura had increased considerably, that it is becoming more and more difficult to find new paddy land for setting Jhumia tribals, that the only lands available are tillhas and that ground nut crops may be raised on them. Ext. A-2364 contains a list of the Scheduled areas in Part A and B States in which certain tribal areas were declared as Scheduled areas. They include Andhra Pradesh, Bihar, Madhya Pradesh and other States, wherein, on the account of the introduction of the fifth schedule, there was no partition. The Commission states in Ext. A-2364(d) that the scheme of administration of Scheduled Areas under the Fifth Schedule visualises a division of responsibility between the State Governments and the Union Government, that the State Government is charged with the duty of screening legislation unsuitable for extension to the tribal areas of framing regulations for their peace and good government with particular reference to the protection of tribal land, allotment of waste land and protection from exploitation by money-lenders, that it has also to implement special schemes for the welfare of the Scheduled Tribes living within its boundaries as well as schemes for their general development and that the Union Government's responsibility extends to providing guidance in regard to the administration of the Scheduled Areas and of additional funds required to raise the level of administration and the standard of life of the tribal communities. In Ext. A-2364(j) the States in which the Tribes Advisory Councils were formed were mentioned. In Exts. A-2364(k) and (l), the Commission gave its

recommendation about the composition of the Tribes Councils. In Ext. B-18 the Commission mentioned the criteria for determining a Scheduled Area namely, firstly to ensure the protection to the Scheduled Tribes and secondly, to raise the level of administration in the Scheduled Areas. In Ext. A-2364(e) the Commission stated that no distinction should be drawn between the States and the Union Territories in implementing the Fifth Schedule. In Ext. A-2364(i) the Commission quoted from Gandhiji:

"I do not want my house to be walled in on all sides and my windows to be stuffed. I want the cultures of all lands to blow about my house as freely as possible. But, I refuse to be blown off my feet by any."

93. So, the Commission summed up that the aim of the Indian Constitution to secure to the tribal people along with all the people of India a social order based upon justice in all fields of lives, equality of status, opportunity and fraternity assuring the dignity of the individual and the unity of the nation—must be achieved.

94. Thus, it is seen that by implementation of Schedule V in Tripura or in any other Union Territory or in any State, there is no partition of the Territory or State. Nor is there any dual Government. The same Administrator who administers the Union Territory of Tripura namely, the Chief Commissioner remains to be the Chief Commissioner of the entire Tripura. The Cabinet remains to be the same. The only change is that the Chief Commissioner will have a Tribes Advisory Committee, besides, to advise him with regard to the matters covered by the Scheduled Area and the Chief Commissioner will regulate the allotment of land and money-lending business and screen the legislation applicable to the Scheduled Area. The Bengalee refugees will not be driven out of the said area. They will remain in the Scheduled Areas as well as in non-Scheduled areas. But, protection is given to the Scheduled Tribes and the lands possessed by them. But, a wrong and intentionally incorrect interpretation was sought to be given by the respondent and other congress members that the Bengalee refugees would be driven out from the Scheduled Areas. The evidence of R.W. 1 is that Shri Sudhanya Dev Barma introduced a resolution in Tripura Legislative Assembly as per Ext. V-28(a) that Fifth Schedule should be immediately introduced in Tripura and that Shri Dasarath Dev Barma an ex-M.P. made a speech in the Lok Sabha as per Ex. B-29(a) to the same effect. R.W. 1 the respondent further stated that the C.P.I. introduced the issue of Fifth Schedule in the election with the object of gaining control over the tribal areas as the communists are losing ground elsewhere. He further stated that the Government established Tribal Development Blocks according to Dhebar Commission report Ext. A-2364, that West Bengal is bursting with refugees, that Assam sealed its borders against the refugees, that Pakistan is trying to grab Tripura with the help of China and that therefore, he was emphasising in the speeches that in Tripura the people must live in peace. He further stated in his chief examination that there are about 8 lakhs of acres of land already under cultivation in Tripura that about 4 lakhs of acres of land more can also be brought under cultivation, that if the communists succeed they may abolish the Tripura Land Revenue and Land Reforms Act, in which case persons having no documents will lose their title to the lands, that strategically a way will be opened to China through the southern boundary Hills, Lushai Hills, Manipur and Nagaland, that military also, the people in Tripura will have disadvantages if they are divided and that on these grounds he opposed the introduction of the Fifth Schedule. Accordingly, he suggested the creation of as many tribal development blocks as possible, as suggested alternatively by Dhebar Commission. He stated that there are 9 out of 30 seats reserved for the Scheduled Tribes in Tripura Assembly, that out of them, the congress captured 6 seats and that the Maharaja of Tripura was elected from the Tripura East Tribal Constituency on congress ticket. He produced Ext. B-32, a printed Map of Tripura, Assam and Manipur and denied having shown such a Map to the electors. But, in the cross-examination, he admitted that even in 1961 the only land that was remaining was *tilla land* fit for ground-nut cultivation and cultivation with water lifts. So, on account of the influx of the refugees the Scheduled Tribes are now left with *tilla lands* fit for ground-nut cultivation. According to him, there are about 80 lakhs non-muslims still in East Pakistan and admitted that he heard that every day about 30 to 35 refugees are migrating to Tripura. He does not know whether there will be a tribal pro-dominated area in Tripura at all, if this kind of rehabilitation of the refugees goes on. He is not able to state whether Ext. A-2364(d) correctly interpretes the law or not. He admitted that in most of the States in India where Fifth Schedule was introduced there has been no partition in those States. But, he insists that there will be a partition ultimately in Tripura if the Fifth Schedule is introduced. He admitted that he did not

consider the example of the introduction of the Fifth Schedule in Uttar Pradesh, Madras and Andhra Pradesh but that he took the case of Assam into consideration. His evidence that there will be partition of Tripura into two blocks—one for the tribals and the other for the non-tribals and that the resident Bengalee refugees will be evicted from the Scheduled area is not correct. R.W. 16 (Sneha Kumar Ghakma), who is working as a private tutor, stated that the then Maharaja of Tripura wanted to divide Tripura between tribals and non-tribals, that R.W. 16, who is a tribal also endorsed his view and wanted a separate area for the tribals, into which the refugees should not be allowed to further infiltrate. He further stated that the tribal predominating area become less tribal predominant on account of the influx of that refugees and that the tribals can be improved by a common brotherhood. So, in February 1966 he joined the congress along with the members of his tribal union. But, it is not correct to state that the introduction of the Fifth Schedule will bifurcate Tripura, the slogan that the refugees, who live in the Scheduled area will again become refugees, is a false slogan. As already pointed out, the Bengalee refugees will live with the tribals in the Scheduled Areas. By the introduction of the Fifth Schedule, the tribals who are the natives of the soil *viz.* Tripura will be protected. It is unfair to neglect their interests in the interest of refugees who are coming to Tripura. The problem of rehabilitation of refugees is that of the Central Government and not of Tripura Government.

95. In the light of the above, the question of law raised by the allegations made in paragraph 7 of Ext. A-2289, has to be examined. It was stated therein that Shri Dasarath Dev Barma and the petitioner submitted proposals in the Parliament and Legislative Assembly that out of the 4416 sq. miles, 1910 sq. miles comprising Khowai, Kamalpur, Kailasahar, Amarpur and Sabroom should be declared as tribal areas according to the fifth Schedule and that then it means that all those who had been rehabilitated in those areas will have to leave their place and come away.

It was further stated therein that this would have three results. Firstly, it would create a conflict between the Bangalees and the tribals who remain in the other part namely, 4116 square miles of Tripura. Secondly, if out of these 1910 square miles more than 3 lakhs of refugees are evicted for the second time, then the 12 lakhs of Bangalees out of the population of 15 lakhs would not have even standing room housing being out of the question and these Bangalees cannot go out elsewhere. So, this state of "Anarchy", that would prevail over the 2206 square miles area of Tripura, would provide opportunity for Pakistan to grab Tripura and it would be the graveyard for the Bangalees, particularly the Bangalee refugees. Then a question was put to the petitioner and P.W. 9 (Nripendra Chakraborty) that, why even though they are Bangalees, they are enthused with the proposal for the ruination of the Bangalees. It was further stated in Ext. A-2289 that Shri Dasarath Dev Barma might become a king in the Tribal state and might join either the Mizos or the proposed Hill State Federation. But, why the petitioner and P.W. 9 (Nripendra Chakraborty), who are Bangalees, were out to ruin the Bangalees? R.W. 1 RESPONDENT admitted that he stated in the meeting as per Ext. A-2292 that "on account of bifurcation in the name of the development of the tribals" at least more than 5 lakhs of uprooted refugees would again be turned into refugees and that this situation in the critical life of the Bangalees was undesirable. So, in fact the respondent canvassed for votes on the basis that Tripura would be partitioned into two portions, that in one portion comprising 1910 sq. miles of area in Tripura there will be only tribals and that all the 12 lakhs of Bangalees will have to be hemmed in the remaining 2206 sq. miles of area, that the Bangalee refugees would again become refugees. This propaganda amounted to an appeal made by the respondent and his agents to vote in his favour and a promotion of feelings of enmity and hatred between the Bangalees and the tribals on the ground, of their community. It also amounted to promotion of ill-feelings and hatred between different classes of the citizens of India namely, Bangalees on one hand the tribals on the other, made for the furtherance of the prospect of respondent's election and to prejudicially effect the election of the petitioner. There are similar cases in some rulings. In *Jujhar Singh, Vs. Bhairon Lall* (7 E.L.R. 458) a poster was published by the Congress Committee against a rival candidate, who was a Jagirdar. It contained the picture of a tenant tied up to a tree and a well dressed Jagirdar asking another, who was seen waving a whip, to flog the tenant and the tenant's wife was shown lying prostrate on the ground. It was held that the poster amounted to exercise of undue influence over the voters, who were mostly illiterate villagers and that the case fell under section 123(2) of the Act. In *Abdul Jalil Choudhury Vs. Rathindra Nath Sen* (A.I.R. 1958 Assam 51) a candidate canvassed in meetings that the election was then the question of Muslims versus

Hindus. It was held that the candidate asked for votes on the ground of community or religion and that it was a corrupt practice as defined in section 123(3) of the Act. This decision was followed in *Nani Gopal Swami Vs. Abdul Hamid Choudhury and another* (A.I.R. 1959 Assam 200). In that case there was a passage in a newspapers conducted by the party to which the candidate belonged, which stated that if the members of the Leftist party won the election, there plan to construct the country included driving out of the Muslims from India and creation of hostilities with the neighbouring State. It was held that it constituted corrupt practice, as it interfered with the free exercise of electoral right and was a systematic appeal to intimidate and influence voters of the Muslim community on false grounds to support the candidature of the Muslim candidate. In this case also the slogan of the respondent that if the Fifth Scheduled was introduced, there would be a partition of Tripura and that the Bangalee refugees would be driven out of one portion and hemmed in another portion was a false propaganda made with the intention of creating ill-feelings between the Bangalees and the tribals and gaining the votes of the Bangalees, especially of Bangalee refugees. It also amounted to an appeal by the respondent, who is a Bengalee, to the Bengalee voters in his Constituency to vote for him, because he is a Bengalee and not to vote to the petitioner, because he was anti-Bengalee. So, the case falls under both sub-sections (3) and 3A of section 123 of the Act.

96. The contention of the learned Counsel for the respondent is that the respondent simply expressed an opinion on the ground of constitutional issue and that, therefore, it is not a corrupt practice. He relied on the following rulings in support of his contention. In *Kultar Singh Vs. Mukhtiar Singh* (A.I.R. 1965 S.C. 141) it was held that a document must be read as a whole, that it would be unrealistic to ignore the fact that when election meetings are held and appeals are made by candidates of opposing political parties, the atmosphere is usually surcharged with partisan feelings and emotions and the use of hyperboles or metaphors and the extravagance of expression in attacking one another, are all a part of the game, that when the question about the effect of speeches delivered or pamphlets distributed at election meetings is argued in the cold atmosphere of a judicial chamber some allowance must be made and the impugned speeches or pamphlets must be construed in that light. But, it was further held that it would be unreasonable to ignore the question as to what the effect of the said speech or pamphlet would be on the mind of the ordinary voter, who attends such meetings and reads the pamphlets or hears the speeches.... In *Jagdev Singh Sidhanti Vs. Pratap Singh Daulta and others*, (A.I.R. 1965 S.C. 183) it was held that section 123(3) must be read in the light of the fundamental right which is guaranteed by Article 29(1) of the Constitution and that in ascertaining the true meaning of the corrupt practice, the area of the fundamental right of citizen must be steadily kept in view. In *Lalsing Keshrising Rehvar Vs. Vallabhdas Shankarlal Thekdi and others* (A.I.R. 1967 Gujarat 62) it was held that in order that an appeal of a religious leader may come within the mischief of sub-section (2) of section 123, it must iminge upon the voter's freedom of the choice of a candidate, and that the effect of the appeal on the mind of the voter and the kind of THE voter are relevant. In the present case 80% of the population consists of refugees from East Pakistan. Some of them have lost their properties. Some came over to Tripura by exchanging their properties with the muslims, who left for East Pakistan. So, the bogey which was raised by the respondent that the refugees would be driven away from a part of Tripura and that they would again become refugees, must have created a terror in the mind of the electorate that really there would be a partition of Tripura and that they are going to become once more refugees. There is absolutely no doubt whatsoever that the propaganda of the respondent was not bonafide and a mere expression of opinion on the Constitutional problem. But, a false propaganda was intentionally made to gain the votes of the Bengalees, especially of the refugees. It was a colourable propaganda. There is no doubt that it was based on a theme that he is a Bengalee while the petitioner is an Anti-Bengalee and that his propaganda promoted feelings of enmity between the Bengalees and the Tribals and the different classes of the citizens of India in Tripura and that the propaganda prejudicially affected the election of the petitioner. The Court is not bound by the opinion of P.W. 6 that para 7 of Ext. A-2289 is an expression of opinion. This case falls under sub-sections (3) and (3A) of section 123 of the Act and consequently under section 100(1) (b) of the Act.

97. There is yet another aspect of the case. In Ext. A-2289 a question was posed that, though Dasarath Dev Barma might become a lord of the tribal areas, why the petitioner and P.W. 9 (Nripendra Chakraborty) who are themselves Bengalees enthused with the proposal of the instruction of the Fifth Schedule

for the ruination of the Bengalees. This was further made clear that the lives of the Bengalees would become more critical by the speech of the respondent as per Ext. A-2292. This is a publication of a statement of fact, which was false to the knowledge of the respondent. To say that the petitioner, who is himself a Bengalee, was doing acts for the ruination of Bengalees, was to canvass for votes of the Bengalees on the ground that the petitioner was anti-Bengalees. This was an attack on the personal character and conduct of the petitioner. This falls under sub-section (4) of section 123 of the Act. The petitioner relied on two rulings of the Supreme Court in this regard. In *Inder Lal Vs. Lal Singh and others* (A.I.R. 1962 S.C. 1156) it was held that section 123(4) of the Act postulates a distinction between the personal character of a candidate and his public and political character, that the provision postulates that if a false statement is made in regard to the public or political character of the candidate, then it would not constitute a corrupt practice even if it is likely to prejudice the prospect of that candidate's election. But, it was further held that circulation of false statement about the private or personal character of the candidate during the period preceeding elections is likely to work against the freedom of election itself. In that case, an allegation was made by the successful candidate that the other candidate purchased the opponents of the congress with money. It was held that it was idle to contend that it was a false statement only against the public character of the other candidate but that fell under section 123(a) of the Act. In *Kumara Nand Vs. Brijmohan Lal Sharma* (A.I.R. 1967 S.C. 808) it was held whether a statement is a statement of fact or a mere expression of opinion depends on the facts of each case and that it has been judged in the circumstances in which the statement is made. In that case the opponent was called the greatest of all thieves. It was held that the statement was undoubtedly a statement of fact. This decision has material bearing on the facts of the present case wherein the petitioner was called as Anti-Bengalee, in the propaganda made by the respondent. As against these rulings the respondent relied on *Abdul Majeed (Meera Sahib) Vs. Bhargavan (Krishnan) Member, Legislative Assembly and others* (A.I.R. 1963 Kerala 18), where it was held that imputation against political party does not constitute an imputation in relation to personal character or conduct of the candidate. This ruling does not apply to this case, as the allegations were made against the petitioner. In *Mohan Singh Vs. Bhanwarlal and others* (A.I.R. 1964 S.C. 1366) it was held that under section 123(4) of the Act, the statement must be in relation to the personal character or conduct of the candidate. But, it was further held that the expression "statement of fact" includes not only an express imputation but also an innuendo of one such may reasonably be raised from the language in which it is couched, and the manner of its publication. In the present case, the innuendo is that the petitioner is anti-Bengalee and that the Bengalees should not vote for him. *Didar Singh Cheeda Vs. Sohan Singh Ram Singh and others* (A.I.R. 1966 Punjab 282) was concerned with a poster, in which it was emphasised that the candidate had taken part in the Akali movement and had participated in the various morchas by the Akali Dal. It was held that the poster was not objectionable. In *Sheopal Singh Vs. Ram Pratap* (A.I.R. 1965 S.C. 677) it was held that section 123(4) of the Act "mens rea" is a necessary ingredient of the corrupt practice and that the person, who publishes a statement, whether he is the author of it or not, does not commit a corrupt practice, unless he has the requisite knowledge. In this case the respondent had the requisite knowledge and was indulging in a propaganda that the petitioner was anti-Bengalee. In *Dr. Jagajit Singh Vs. Giant Kartan Singh and others* (A.I.R. 1966 SC 773) it was held that it is not easy to lay down any general considerations which would help the determination of the issue as to whether an allegation is with regard to the personal character as distinguished from the public character or not and that it is not desirable to lay down any general principle in this behalf. As already stated, this question is one of construction depending upon the facts and circumstances of each case. In the guise of opposition to the introduction of Schedule V, the pamphlet depicted the petitioner as anti-Bengalee and thereby made a statement of fact which is false. It is a statement which could not be believed by the respondent to be true, which attacked the personal character of the petitioner. The statement was calculated to prejudice his election, because 80% of the population consists of Bengalees. Thus the charges fall under section 123(4) of the Act and consequently under section 100(1)(b) of the Act.

98. Thus, to sum up, the respondent is found to have committed the following corrupt practices:—

- (1) He procured the services of Shri S. R. Chakraborty, the then S.D.M., Sadar (a Gazetted officer) for the furtherance of the prospects of his election and committed corrupt practice within the meaning of

Sub-section (7) of section 123 of the Act and his election is liable to be set aside under section 100(1)(b) of the Act.

- (ii) Secondly, there was discrimination and non-compliance with Article 14 of the Constitution of India on the part of Tripura Government in supplying the supplementary voters' list for 32,500 and odd supplementary voters to the petitioner and his party and the petitioner's election was materially affected thereby and it is liable to be set aside under section 100(1)(d)(iv) of the Act.
- (iii) Thirdly, there was undue influence with the free exercise of the petitioner's electoral rights by the petitioner's agent and others with his implied consent in his interests within the meaning of sub-section (2) of section 123 of the Act and the election of the respondent was materially affected thereby and it is liable to be set aside under section 100(1)(d)(ii) of the Act.
- (iv) Fourthly, the respondent canvassed for votes by appealing to the electors that he was a Bengalee, while the petitioner was anti-Bengalee, for the furtherance of the prospects of his own election and for prejudicially affecting the petitioner's election and committed corrupt practice within the meaning of Sub-section (3) of section 123 of the Act and his election is liable to be set aside under section 100(1)(b) of the Act.
- (v) Fifthly, the respondent promoted feelings of enmity and hatred between different classes of the citizens of India in Tripura and between Bengalees and the tribals for the furtherance of the prospects of his election and for prejudicially affecting the election of the petitioner and committed corrupt practice within the meaning of sub-section (3A) of section 123 of the Act and his election is liable to be set aside under section 100(1)(b) of the Act.
- (vi) Sixthly, the respondent committed corrupt practice by publication of statement of fact that the petitioner was anti-Bengalee, which the respondent did not believe to be true, in relation to the personal character and conduct of the petitioner—being a statement reasonably calculated to prejudice the prospects of the petitioner's election and committed corrupt practice within the meaning of sub-section (4) of section 123 of the Act and his election is liable to be set aside under section 100(1)(b) of the Act.

99. The respondent's Counsel pointed out that immediately after the election results were announced, there was an editorial as per Ext. B-33 in Genaraj dated 23rd February, 1967 about the election results, but that no allegation was made that the congress party nominees succeeded by committing corrupt practices. Of course, there are some allegations of corruption against the party in that editorial. The Court is not bound by the opinion of others. It has to come to its own independent findings on the basis of evidence.

100. For the above reasons, I find on issue (viii) that the allegations of corrupt practices summarised in paragraph 94 above are covered by section 123 of the Act. I find issues (xii) and (xiv) in the affirmative.

101. Issue (XIII).—The petitioner prays for the relief of declaration that he had been duly elected. But under section 101(b) of the Act such a relief can be granted only when the High Court is of opinion that, but for the votes obtained by the returned candidate by corrupt practices, the petitioner would have obtained majority of the valid votes. But, there is no evidence to show that the petitioner would have obtained majority votes but for the corrupt practices committed by the respondent. So, declaration can be granted. Vide also the rulings in *Keshav Lakshman Borkar Vs. Deorao Lakshman Anande* (A.I.R. 1960-S.C. 131), *Sudhir Kumar Mondal Vs. Abhoy Pada Saha* (A.I.R. 1966 Calcutta 141), *Chadalavada Subba Rao Vs. Kasu Brahmananda Reddy and others* (A.I.R. 1967 A.P. 155), *Kattimani Chandappa Jampanna, Settlement Hubli Vs. Laxman Siddappa Naik and others* (A.I.R. 1967 Mysore 182) and page 497 of Doabla's Law of Elections and Election Petitions, 1967 edition, relied on by the respondent's Counsel in this connection. I find issue (xiii) in the negative.

102. *Issue (XV).*—In the result, the election of the respondent to the Lok Sabha from the Tripura West Parliamentary Constituency is hereby declared void and is set aside and the petition is allowed accordingly. Re-poll is hereby ordered. The petitioner's prayer for declaration that he himself was duly elected is rejected. The petitioner is entitled to the costs of the petition. Pleader's fee Rs. 500/-.

Dictated to the Stenographer, transcribed by him, corrected by me and pronounced in open Court this 14th day of June, 1968.

Sd./-

Judicial Commissioner,

Tripura, Agartala.

[No. 82/TP/1/67.]

### ORDER

*New Delhi, the 8th January 1969*

S.O. 173.—Whereas Shri Vishwanath Singh of Naya Bhojpur (Dumraon), District Shahabad (Bihar), who was a contesting candidate for election to the House of the People from Chapra Parliamentary Constituency, held in February, 1967, was disqualified by the Commission by its Order No. BR-HP/6/67(44), dated the 5th August, 1968, under section 10-A of the Representation of the People Act, 1951, for his failure to lodge his account of election expenses in the manner required by the said Act and the Rules made thereunder;

Now, therefore, in exercise of the powers conferred by section 11 of the said Act, the Election Commission, for the reasons recorded on the representation made by the said candidate Shri Vishwanath Singh reduces the period of disqualification imposed on him to the period of disqualification already suffered by him and removes the disqualification for the unexpired period with immediate effect.

[No. BR-HP/6/67(44-R).]

By Order,

A. N. SEN, Secy.

### ORDERS

*New Delhi, the 24th December 1968*

S.O. 174.—Whereas the Election Commission is satisfied that Shri Ram Prasad, S/o, Shri Data Ram, Raja-Ka-Rampur, District Etah, Uttar Pradesh, a contesting candidate for election to the House of the People from Kasganj Constituency, has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And Whereas, the said candidate even after due notice has not given any reason or explanation for the failure;

Now, Therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Ram Prasad to be disqualified for being chosen as, and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this Order.

[No. UP-HP/70/67.]

S.O. 175.—Whereas the Election Commission is satisfied that Shri Sadiq Nawaz Khan, Prithvi Darwaza, Kaimganj, District Farrukhabad, Uttar Pradesh, a contesting candidate for election to the House of the People from Kasganj Constituency, has failed to lodge an account of his election expenses within the time and in the manner required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas, after considering the representation made by the said candidate, the Election Commission is further satisfied that he has no good reason or justification for the failure;



Now, Therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Sadiq Nawaz Khan to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a Period of three years from the date of this Order.

[No. UP-HP/70/67(1).]

By Order,

HARDIP SINGH, Under Secy.

for Secy.

### आदेश

नई दिल्ली, 24 दिसम्बर 1968

एस० अ० 176.—यतः, निर्वाचन आयोग का समाधान हो गया है कि लोक सभा के लिए निर्वाचन के निमित्त कासगंज निर्वाचन क्षेत्र से चुनाव लड़ने वाले एक उम्मीदवार श्री राम प्रसाद, सुपुत्र श्री दाताराम, राजा-का-रामपुर, जिला एटा, उत्तर प्रदेश, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तदधीन बनाए गए नियमों द्वारा यथा अपेक्षित अपने निर्वाचन व्ययों का लेखा प्रस्तुत करने में असफल रहे हैं ;

और, यतः, उक्त उम्मीदवार ने, उसे सम्यक् नोटिस दिये जाने पर भी, अपनी इस असफलता के लिये कोई कारण अथवा स्पष्टीकरण नहीं दिया है ;

अतः, अब, उक्त अधिनियम की धारा 10क के अनुसरण में निर्वाचन आयोग एतद्द्वारा उक्त श्री राम प्रसाद को संसद के दोनों सदनों में से किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और सदस्य होने के लिये इस आदेश की तारीख से तीन वर्ष की कालावधि के लिये अनर्हित घोषित करता है ।

[सं० उ० प्र०-लो० सं०/70/67]

एस० अ० 177.—यतः, निर्वाचन आयोग का समाधान हो गया है कि लोक सभा के लिए निर्वाचन के निमित्त कासगंज निर्वाचन क्षेत्र से चुनाव लड़ने वाले एक उम्मीदवार श्री सादिक नवाज खान, पृथ्वी दरवाजा, कायमगंज, जिला फर्रुखाबाद, उत्तर प्रदेश लोक प्रतिनिधित्व अधिनियम, 1951 तथा तदधीन बनाए गए नियमों द्वारा अपेक्षित समय तथा रीति से अपने निर्वाचन व्ययों का लेखा प्रस्तुत करने में असफल रहे हैं ;

और, यतः, उक्त उम्मीदवार द्वारा दिये गये अभ्यावेदन पर विचार करने के पश्चात्, निर्वाचन आयोग का यह भी समाधान हो गया है कि उसके पास इस असफलता के लिये कोई अच्छा कारण या न्यायोचित्य नहीं है ;

अतः अब, उक्त अधिनियम की धारा 10क के अनुसरण में निर्वाचन आयोग एतद्द्वारा उक्त श्री सादिक नवाज खान को संसद के दोनों सदनों में से किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और सदस्य होने के लिये इस आदेश की तारीख से तीन वर्ष की कालावधि के लिये अनर्हित घोषित करता है ।

[सं० उ० प्र०-लो० सं०/70/67. (1)]

आदेश से,

हरदीप सिंह, अव्वर सचिव,

कृते सचिव, भारत निर्वाचन आयोग ।

## MINISTRY OF HOME AFFAIRS

## ORDER

*New Delhi, the 2nd January 1969*

**S.O. 178.**—In exercise of the powers conferred by sub-section (1) of section 5 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the State of Bihar for the investigation of any of the offences specified below; namely:—

- (a) Offences under sections 47 and 55 of the Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act 2 of 1915);
- (b) Attempts, abetments and conspiracies in relation to or in connection with one or more offences mentioned in clause (a) and any other offence committed in the course of the same transaction arising out of the same facts.

[No. 228/6/68-AVD-IL.]

R. C. JOSHI, Under Secy.

## MINISTRY OF FINANCE

(Department of Economic Affairs)

*New Delhi, the 7th January 1969*

**S.O. 179.**—In exercise of the powers conferred by section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the Provisions of sub-section (2) of section 19 of the said Act shall not apply to the Oriental Bank of Commerce Ltd., New Delhi, till the 1st January, 1970, in respect of the shares of the Suprabhat Engineering Co. Ltd., held by it as pledgee since the 2nd January, 1967.

[No. F.15(18)-BC/68.]

**S.O. 180.**—In exercise of the powers conferred by section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of Section 9 of the said Act shall not apply to the United Bank of India Ltd., Calcutta in respect of the property measuring ten Kathas of open land, held by it at 12, Botanical Garden Lane, within Police Station Sibpore, District Howrah, West Bengal, till the 6th December, 1970.

[No. F.15(9)-BC/68.]

V. SWAMINATHAN, Under Secy.

(Department of Economic Affairs)

*New Delhi, the 13th January 1969*

**S.O. 181.**—In exercise of the powers conferred by sub-section (2) of section 1 of the Banking Laws (Amendment) Act, 1968 (58 of 1968), the Central Government hereby appoints the 1st day of February, 1969 as the date on which the said Act shall come into force.

[No. F.16(10)-BC/68.]

**S.O. 182.**—In exercise of the powers conferred by clause (b) of sub-section (1) of Section 8 of the Reserve Bank of India Act, 1934 (2 of 1934), the Central Government hereby nominates with effect from the 15th January, 1969, the following persons to be the Directors of the Central Board of the Reserve Bank of India, namely:—

1. Shri S. L. Kirloskar,  
Kirloskar Group of Companies,  
Ganesh Khind Road,  
POONA.

From the Local Board for the  
Western Area.

2. Shri Bhaskar Mitter,  
Chairman,  
Andrew Yule & Co.,  
Yule House,  
8, Clive Row,  
CALCUTTA-1.

From the Local Board for the  
Eastern Area.

3. Shri V. N. Puri,  
Chairman,  
National Agricultural Co-operative  
Marketing Federation,  
D-44, South Extension Pt. II,  
NEW DELHI-16.

From the Local Board for the  
Northern Area.

4. Shri Ramdave Row,  
Shivanand Griha,  
77, Begumpet,  
HYDERABAD.

From the Local Board for the  
Southern Area.

[No. F.3(79)-BC/68(i).]

S.O. 183.—In exercise of the powers conferred by sub-section (1) of section 8 of the Reserve Bank of India Act, 1934 (2 of 1934), the Central Government hereby nominates Shri D. C. Kothari, No. 3, Kothari Road, Nungambakkam, Madras-51 as a Director of the Central Board of the Reserve Bank of India vice Shri Ramdave Row.

[No. F.3(79)-BC/68(ii).]

D. N. GHOSH, Dy. Secy.

**(Department of Revenue and Insurance)**

*New Delhi, the 7th January 1969*

S.O. 184.—In exercise of the powers conferred by section 39 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby publishes the following certificate granted to the Social Service Provident Insurance Company Ltd., Belgaum an insurer whose controlled business has been transferred to and vested in the Life Insurance Corporation of India under the provisions of the said Act.

*Certificate*

Whereas the Social Service Provident Insurance Company Ltd., Belgaum is an insurer whose controlled business has been transferred to and vested in the Life Insurance Corporation of India under the provisions of the Life Insurance Corporation Act, 1956 (31 of 1956);

And whereas the said insurer has collected and distributed compensation money paid to it by the Corporation under the provisions of the said Act;

And whereas the said insurer has complied with all directions given to it by the said Corporation for the purpose of securing that the ownership of any property or any right is effectively transferred to the Corporation;

And whereas the said insurer has made an application to the Central Government that there is no reason for the continued existence of the insurer;

Now, therefore, in exercise of the powers conferred by section 39 of the said Act, the Central Government hereby grants to the said insurer the certificate that there is no reason for the continued existence of the insurer.

[No. 3(2)-INS.II/64.]

RAJ K. NIGAM, Dy. Secy.

वित्त मंत्रालय

(राजस्व और बीमा विभाग)

नई दिल्ली, 7 जनवरी 1969

एस० ओ० 185 —जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 39 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार सोशल सर्विस प्रोविडेंट इन्श्योरेंस कं० लिमिटेड बेलगांव को, जो एक बीमाकर्ता है और जिसके नियंत्रणाधीन का कारबार उक्त अधिनियम के उपबन्धों के अधीन भारतीय जीवन बीमा निगम को अन्तर्लिखित और उसमें निहित कर दिया गया है, अनुवर्त किए गये निम्नलिखित प्रमाणपत्र को एतद्वारा प्रकाशित करती है।

## प्रज्ञापत्र

यतः सोशल सर्विस प्राविडेंट इंश्योरेंस कं० लिमिटेड, बेलगांव जो एक बीमाकर्ता है और जिसके नियंत्रणाधीन का कारखाना जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) के उपबन्धों के अधीन भारतीय जीवन बीमा निगम को अन्तरित और उसमें निहित कर दिया गया है :

और यतः उक्त बीमाकर्ता ने उक्त अधिनियम के उपबन्धों के अधीन नियम द्वारा उसे संदत्त प्रतिकर-धन का संग्रहण और वितरण कर लिया है ;

और यतः उक्त बीमाकर्ता ने यह सुनिश्चित करने के प्रयोजनार्थ, कि किसी सम्पत्ति का स्वामित्व या कोई अधिकार निगम को प्रभावपूर्णतया अन्तरित हो जाता है, उक्त निगम द्वारा उसे दिये गये सभी निदेशों का अनुपालन किया है ;

और यतः उक्त बीमाकर्ता ने केन्द्रीय सरकार को आवेदन किया है कि बीमाकर्ता का अस्तित्व बना रहने का कोई कारण नहीं है ;

अतः अब उक्त अधिनियम की धारा 39 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त बीमाकर्ता को एतद्द्वारा यह प्रमाणपत्र अनुदत्त करती है कि बीमाकर्ता का अस्तित्व बना रहने का कोई कारण नहीं है ।

[सं० 3(1)—बीमा (II)—64]

राज के० निगम, उप सचिव ।

## CENTRAL BOARD OF DIRECT TAXES

## ESTATE DUTY

*New Delhi, the 6th January 1969*

**S.O. 186.**—In exercise of the powers conferred by the second proviso to sub-section (2) of section 4 of the Estate Duty Act, 1953 (34 of 1953) and in supersession of its notification No. 35 F.No. 21/33/68-ED dated 3rd December 1968 published as S.O. 4434 in Part II Section 3, Sub-Section (ii) of the Gazette of India dated 14th December, 1968, the Central Board of Direct Taxes hereby directs that every Income-tax Officer appointed to be an Assistant Controller and posted to the Estate Duty-cum-Income-tax Circle Kanpur shall perform his functions as Assistant Controller in the said circle to the exclusion of all other Assistant Controllers in respect of the estates of all deceased persons who, immediately before their death were being or would have been assessed to Income-tax had they derived any taxable income in any income-tax circle; the headquarters of which lies, within the revenue districts of Kanpur, Jhansi, Fatehgarh, Etawah, Agra and Mainpuri of the Uttar Pradesh State.

2. This notification shall be deemed to have come into force on 2nd December, 1968.

*Explanatory Note*

[This note does not form part of the notification but is intended to be merely clarificatory].

(This notification has become necessary due to the revision of jurisdiction of Commissioner of Income Tax, Lucknow.)

A. R. RAO, Under Secy.  
Central Board of Direct Taxes.

[No. 1/F.No.21/135/68-ED]

**S.O. 187.**—In exercise of the powers conferred by the second proviso to sub-section (2) of Section 4 of the Estate Duty Act, 1953 (34 of 1953) and in supersession of its notification No. 12/F.No. 21/14/65-ED dated 25th June, 1965 published as S.O. 2086 in Part II Section 3, Sub-section (ii) of the Gazette of India dated 3rd July, 1965, the Central Board of Direct Taxes hereby directs that every Income-tax Officer appointed to be an Assistant Controller and posted to the Estate Duty-cum-Income-tax Circle, Dehradun shall perform his functions as Assistant Controller in the said circle to the exclusion of all other Assistant Controllers in respect of the estate of deceased persons, who immediately before their death, were being or would have been assessed to Income-tax had they derived any taxable income in any Income-tax Circle, the headquarters of which lies within the revenue districts of Dehradun, Meerut, Saharanpur, Mazaffarnagar, Mathura and Aligarh of the Uttar Pradesh State.

2. This notification shall be deemed to have come into force from 2nd December, 1968.

*Explanatory Note.*

[This note does not form a part of the notification but is intended to be merely clarificatory].

This notification has become necessary due to the revision of jurisdiction of Commissioner of Income-tax, Lucknow.

[No. 2/F.No. 21/135/68-E.D.]

A. R. RAO, Under Secy.

CENTRAL EXCISE COLLECTORATE: DELHI.

*New Delhi, the 1st November 1968*

**S.O. 188.**—In exercise of the powers conferred upon me under Rules 15 and 16 of the Central Excise Rules, 1944, I hereby notify that no declaration will be necessary under the above said rule in respect of un-manufactured tobacco grown in areas not exceeding 12 Ares and cured in quantities not exceeding 60 kgs. within the jurisdiction of the union territory of Delhi except in respect of such tobacco grown or cured in the eleven villages of the said union territory mentioned below:—

1. Narela.
2. Jaunti.
3. Dichaon Kalan.
4. Mahram Nagar.
5. Hasthan.
6. Masjid Moth.
7. Shahpur Jat.
8. Begam pur.
9. Lado Sarai.
10. Ladher Sarai.
11. Basant.

[C. No. V(a)15/9/Int./68]

C. L. NANGIA, Dy. Collector.

*New Delhi, the 6th January 1969*

**S.O. 189.**—In pursuance of Rule 5 of the Central Excise Rules, 1944, I, Collector of Central Excise, Delhi, hereby authorise the Central Excise Officers of Central Excise Collectorate, Delhi, of and above the ranks mentioned in column 2 of the table given below, to exercise within their respective jurisdiction, the powers of the Collector under

the Central Excise Rules mentioned in column 3 of the table, subject to the limitations set out in column 4 thereof:—

S. No.	Rank of Officers	Central Excise Rules	Limitation, if any
1	2	3	4
1	Assistant Collector	56A (2)	A copy of the permission granted shall be forwarded to the Collector.
2	Assistant Collector	56A (4)	—
3	Superintendent	56A (4)	In relation to adjudication only of offending goods (including materials and component parts) within their powers of adjudication.

2. This issues in supersession of this Collectorate Notification No. 1CE/65, dated 6th February, 1965 and No. 8/68-Central Excises, dated 21st September, 1968.

(C. No. IV(16)96CE/68.)

[No. 1/69-Central Excises]

R. PRASAD, Collector.

#### OFFICE OF THE COLLECTOR OF CENTRAL EXCISE, HYDERABAD

*Hyderabad, the 22nd November 1968*

S.O. 190.—Collectorate Notification/C.E. No. 4/68 dated 26th October 1968 is hereby rescinded.

2. As a result collectorate Notification/C.E. Nos. 1/68 and 2/68 both dated 27th May 1968 will become operative.

[No. 6/68.]

M. L. ROUTH, Collector.

#### CENTRAL EXCISE COLLECTORATE, BORADA

##### CUSTOMS

*Baroda, the 4th January 1969*

S.O. 191.—In exercise of the powers conferred by Section 106-A of the Customs Act, 1962 (52 of 1962), read with clause (34) of Section 2 of the Customs Act, 1962, the Collector of Central Excise and Customs, Baroda hereby assigns the functions under Section 106-A of the said Act to all officers not below the rank of Inspectors of Central Excise and Customs of Baroda Collectorate of Central Excise.

(No. VIII/1-2/Cus/69.)

[No. 1/1969]

L. M. KAUL, Collector.

#### COLLECTOR OF CUSTOMS, BOMBAY

##### CUSTOMS

*Bombay, the 4th January 1969*

S.O. 192.—In exercise of the powers conferred by Section 106(A) of the Customs Act, 1962 (52 of 1962) read with Clause (34) of Section 2 of the said Act, I, G. S. Sawhney, Collector of Customs, Bombay, hereby assign the functions under section 106(A) of the said Act to the Officers of Customs specified in the Schedule below.

I also authorise for the purposes of the said section, the Officers specified in the said Schedule:

SCHEDULE

All officers of or above the rank of preventive Officer Grade II except Ministerial Officers.

(File No. C-1212/69.)

[No. 1.]

G. S. SAWHNEY,  
Collector of Customs, Bombay.

MINISTRY OF PETROLEUM AND CHEMICALS

New Delhi, the 4th January 1969

**S.O. 193.**—Whereas it appears to the Central Government that it is necessary in the public interest that Pipelines for the transport of Petroleum from Wavel-2A to Flare Point in the Kalol Oil Field, in Gujarat State, should be laid by the Oil and Natural Gas Commission and that for the purpose of laying such Pipelines, it is necessary to acquire the Right of User in the land described in the Schedule annexed thereto;

Now, therefore, in exercise of the powers conferred by Sub-Section (i) of the Section 3 of the Petroleum Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

Any person interested in the said land may, within 21 days from the date of this notification, object to the laying of the pipelines under the land to the Competent Authority, at Geology Shed No. 27, Non-drilling Stores Area, Near Central Workshop, Makarpura Road, Baroda-4, in the Office of the Gujarat Pipelines Project (Oil & Natural Gas Commission), Baroda. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by a legal practitioner.

SCHEDULE

(Laying Pipeline from Wavel-2A to Flare Point)

State : Gujarat Dist.: Gandhinagar : Taluka : Gandhinagar

Village	S. No.	Hectare	Acre	P. Acre
Indroda	107	0	7	48

[No. 20/3/67-IOC/L-1]

ERRATA

New Delhi, the 20th December 1968

**S.O. 194.**—In the notification of the Government of India in the former Ministry of Mines and Fuel S.O. No. 3000 dated 9th October, 1963 published in the Gazette of India Part II, Section 3, Sub-Section (ii), dated 19th October, 1963, at page 3804, S. No. 162 of village Ghodadra be omitted.

[No. 31/38/63-ONG/Prod/IOC (ii) Vol. 7.]

New Delhi, the 10th January 1969

**S.O. 195.**—In the notification of the Government of India in the Ministry of Petroleum and Chemicals No. 31/41/64-ONG(iii), dated 1st February, 1965 published under S.O. No. 567 in the Government Gazette of India, Part II, Section 3, Sub-Section (ii), dated 13th February, 1965.

(I) At page No. 635 and at Village Vaso, Taluka Nadiad—

Read  
S. No. 254

For  
S. No. 259

[No. 31/41/64/ONG/LAB. (Vol. 2).]

**S.O. 196.**—In the notification of the Government of India in the Ministry of Petroleum and Chemicals No. 31/38/63-ONG published under S.O. No. 503, dated 31st January, 1964 in the Government Gazette of India, Part II, Section 3, Sub-Section (ii), dated 8th February, 1964 at page 654 and at Village Kahan, Taluka Broach—

*Omit* S. Nos. 177/6 and 85/6.

[No. 31/38/63-ONG/LAB.(Vol. 6).]

**S.O. 197.**—In the notification of the Government of India, Ministry of Petroleum and Chemicals, No. 31/41/64-ONG published under S.O. No. 3024, dated 24th August, 1964 in the Gazette of India, Part II, Section 3, Sub-Section (ii), dated 5th September, 1964.

1. At page No. 3395 and at Village Hadgud, Taluka Anand *omit* S. No. 28/1.
2. At page No. 3395 and at Village Vasad, Taluka Anand *omit* S. No. 680/P with area of A.O. G. 5-Sq. 57.
3. At page No. 3397 and at Village Anand, Taluka Anand *omit* S. No. 1240 Paiki.
4. At page No. 3398 and at Village Anand, Taluka Anand *for* area of S. No. 1110—

<i>Read</i>			<i>For</i>		
Hectare	Acre	P. Acre	Hectare	Acre	P. Acre
0	2	2	0	7	8

[No. 31/41/64-ONG/OR/LAB.]

**S.O. 198.**—In the notification of the Government of India in the Ministry of Petroleum and Chemicals No. 31/38/63(Ank.)-ONG published under S.O. No. 3023, dated 22nd August, 1964 in the Government Gazette of India, Part II, Section 3, Sub-Section (ii), dated 5th September, 1964—

At page No. 3392 and at Village Piludra, Taluka Ankleshwar *omit* S. No. 241.

[No. 31/38/63-ONG/LAB.(i)(Vol. 4).]

**S.O. 199.**—In the notification of the Government of India in the Ministry of Petroleum and Chemicals No. 31/38/63-ONG published under S.O. No. 357, dated 18th January, 1964 in the Government Gazette of India, Part II, Section 3, Sub-Section (ii), dated 1st February, 1964—

- (1) At page No. 382 and at Village Panod, Tehsil Ankleshwar *omit* S. No. 85.
- (2) At page No. 383 and at Village Kansabt, Tehsil Ankleshwar *omit* S. No. 38/A.

[No. 31/38/63-ONG/LAB.(ii)(Vol. 4).]

I. M. SAHAI, Dy. Secy.

## MINISTRY OF COMMERCE

New Delhi, the 7th January 1969

**S.O. 200.**—The following bye-laws made by the Coir Board in exercise of the powers conferred by sub-section (1)(d) of section 27 of the Coir Industry Act, 1953 (45 of 1953) read with bye-laws 15 and 16 of the Coir Board (Transaction of Business, Conditions of Service of Employees and Maintenance of Accounts) Bye-laws, 1955 and confirmed by the Central Government are hereby published as required by sub-section (2) of the said section, namely:—

1. **Short title and commencement.**—(a) These bye-laws, may be called the Coir Board Services (Classification, Control and Appeal) bye-laws, 1969.

(b) They shall come into force at once.

2. **Interpretation.**—In these bye-laws, unless the context otherwise requires—

(a) 'appointing authority' in relation to a Board's employee means—

(i) the authority empowered to make appointments to the post which the Board's employee for the time being holds, or

(ii) the authority which appointed the Board's employee to the post which he for the time being holds;

(b) 'Board' means the Coir Board established under section 4 of the Coir Industry Act, 1953 (45 of 1953);



- (c) 'Board's employee' means any person employed under the Board under section 9(2) of the Coir Industry Act, 1953 (45 of 1953) and includes a person whose services have been lent on foreign service to the Central or any State Government or any local body or authority and also a person in the service of the Central Government or State Government or a local or other authority whose services are placed temporarily at the disposal of the Board;
- (d) 'Chairman' means the Chairman of the Board;
- (e) 'Executive Committee' means the Executive Committee of the Board;
- (f) 'Disciplinary authority' in relation to the imposition of a penalty on a Board's employee means the authority competent under these bye-laws to impose on him any of the penalties specified in bye-laws 8;
- (g) 'Pay' means pay as defined in the Fundamental Rules and Supplementary Rules as applied to Central Government employees.
- (h) 'Schedule' means the Schedule appended to these bye-laws;
- (i) 'Service' means service under the Board;
- (j) 'Secretary' means the Secretary of the Board.

3. **Application.**—(1) These bye-laws shall apply to every employee of the Board, but shall not apply to—

- (a) any person in casual employment;
- (b) any person on daily wages;
- (c) any person subject to discharge from service on less than one month's notice;

(2) Notwithstanding anything contained in clause (1), the Central Government may by order exclude from the operation of all or any of these bye-laws any employee or class of employees of the Board;

(3) If any doubt arises as to whether these bye-laws or any of them apply to any person, the matter shall be referred to the Central Government who shall decide the same.

4. **Protection of rights and privileges conferred by any law or agreement.**—Nothing in these bye-laws shall operate to deprive any Board's employee of any right or privilege to which he is entitled—

- (a) by or under any law for the time being in force; or
- (b) by the terms of any agreement subsisting between such person and the Board at the commencement of these bye-laws.

#### PART II—Classification

5. **Classification of posts.**—All posts under the Board's service shall be classified as follows :—

Sl. No.	Description of post	Classification of post
1.	A post carrying a pay or a scale of pay with a maximum of not less than Rs. 950/-	Class I
2.	A post carrying a pay or a scale of pay with a maximum of not less than Rs. 575/- but less than Rs. 950/-	Class II
3.	A post carrying a pay or a scale of any with a maximum of over Rs. 110/- but less than Rs. 575/-	Class III
4.	A post carrying a pay or a scale of pay with a maximum of Rs. 110/- or less.	Class IV

#### PART III—Appointment Authorities

6. **Appointments to the posts of Chairman and Secretary of the Board shall be made by the Central Government. Appointments to other posts shall be made by the authorities specified in this behalf in the Schedule.**

PART IV—*Suspension*

7. **Suspension.**—(1) The appointing authority or any authority to which it is subordinate or the Chairman may place a Board's employee under suspension—

- (a) where a disciplinary proceeding against him is contemplated or is pending, or
- (aa) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial;

Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(2) A Board's employee shall be deemed to have been placed under suspension by an order of appointing authority—

- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;
- (b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

*Explanation.*—The period of forty-eight hours referred to in clause (b) of this bye-law shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Board's employee is set aside in appeal or on review under these bye-laws and the case is remitted for further inquiry or action or with any other direction, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement, and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Board's employee is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Board's employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) (a) An order of suspension made or deemed to have been made under this bye-law shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a Board's employee is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension the authority competent to place him under suspension may, for reasons to be recorded by him in writing direct that the Board's employee shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this bye-law may, at any time, be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

PART V—*Penalties and Disciplinary Authorities*

8. **Penalties.**—The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Board's employee, namely:—

**Minor Penalties:**

- (i) Censure;
- (ii) Withholding of his promotion;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Board by negligence or breach of orders;

- (iv) Withholding of increments of pay;

### Major Penalties

- (v) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Board's employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;
- (vi) reduction to a lower time-scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Board's employee to the time-scale of pay, grade, post or Service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or Service from which the Board's employee was reduced and his seniority and pay on such restoration to that grade, post or Service;
- (vii) compulsory retirement;
- (viii) removal from service which shall not be a disqualification for future employment under the Board;
- (ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Board.

*Explanation.*—The following shall not amount to a penalty within the meaning of this bye-law, namely :—

- (i) withholding of increments of pay of a Board's employee for his failure to pass any departmental examination in accordance with the rules or orders governing the service to which he belongs or post which he holds or the terms of his appointment;
- (ii) stoppage of a Board's employee at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;
- (iii) non-promotion of a Board's employee whether in a substantive or officiating capacity, after consideration of his case, to a Service, grade or post for promotion to which he is eligible;
- (iv) reversion of a Board's employee officiating in a higher Service, grade or post to a lower service, grade or post, on the ground that he is considered to be unsuitable for such higher Service, grade or post or on any administrative ground unconnected with his conduct;
- (v) reversion of a Board's employee, appointed on probation to any other Service, grade or post, to his permanent Service, grade or post, during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing such probation;
- (vi) replacement of the services of a Board's employee whose services had been borrowed from a State Government or the Central Government or an authority under the control of a State Government or the Central Government or any other authority at the disposal of the authority from which his services had been borrowed;
- (vii) compulsory retirement of a Board's employee in accordance with the provisions relating to his superannuation or retirement;
- (viii) termination of the services—
  - (a) of a Board's employee appointed on probation, during or at the end of the period of probation, in accordance with the terms of his appointment or the rules and orders governing such probation; or
  - (b) of a temporary Board's employee in accordance with the terms of his appointment; or
  - (c) of a Board's employee employed under an agreement, in accordance with the terms of such agreement;
- (ix) transfer of a person from one post to another or from one locality to another, when such transfer is not to a lower post or expressly states that the transfer is being made as a measure of penalty.

**9. Disciplinary Authorities.**—(1) The Central Government may impose any of the penalties specified in bye-law 8 on any Board's employee.

(2) Without prejudice to the provisions of clause (1), any of the penalties specified in bye-law 8 may be imposed on any Board's employee by the appointing authority or

the authorities specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or a special order of the Central Government.

(3) No penalty specified in clauses (v) to (ix) of bye-law 8 shall be imposed by any authority lower than the appointing authority.

**10. Authority to institute proceedings.**—A disciplinary authority competent under these bye-laws to impose any of the penalties specified in clauses (i) to (iv) of bye-law 8 may institute disciplinary proceedings against any Board's employee for the imposition of any of the penalties specified in clauses (v) to (ix) of bye-law 8 notwithstanding that such disciplinary authority is not competent under those bye-laws to impose any of latter penalties.

#### PART VI—Procedure for Imposing Penalties

**11. Procedure for imposing major penalties.**—(1) No order imposing any of the penalties specified in clauses (v) to (ix) of bye-law 8 shall be made except after an enquiry held, as far as may be, in the manner hereinafter provided.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of any misconduct or misbehaviour against a Board's employee, it may itself inquire into or appoint an authority to inquire into the truth thereof.

*Explanation.*—Where the disciplinary authority itself holds the inquiry, any reference to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Board's employee under this bye-law and bye-law 12, the disciplinary authority shall draw up or cause to be drawn up—

- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
- (ii) a statement of the imputation of misconduct or misbehaviour in support of each article of charge which shall contain a statement of all relevant facts including any admission or confession made by the Board's employee, and a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Board's employee a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained, and shall require the Board's employee to submit, within such time (not less than ten days) as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or if it considers it necessary so to do, appoint under clause (2) an inquiring authority for the purpose and where all the articles of charge have been admitted by the Board's employee in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in bye-law 12.

(b) If no written statement of defence is submitted by the Board's employee, the disciplinary authority may inquire into the articles of charge or may, if it considers it necessary to do so, appoint under clause (2), an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquire into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Board's employee or a legal practitioner to be known as the 'Presenting Officer' to present on its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority—

- (i) a copy of the articles of charge and a statement of the imputations of misconduct or misbehaviour;
- (ii) a copy of the written statement of defence, if any, submitted by the Board's employee;

- (iii) a copy of the statement of witnesses, if any;
- (iv) evidence proving the delivery of the documents referred to in clause (3) to the Board's employee; and
- (v) a copy of the order appointing the 'Presenting Officer'.

(7) The Board's employee shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf, or within such further time, not exceeding ten days as the inquiring authority may allow.

(8) The Board's employee may take the assistance of any other Board's employee to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits.

(9) If the Board's employee who has not admitted any of the articles of charge in his written statement, of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Board's employee thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Board's employee pleads guilty.

(11) The inquiring authority shall, if the Board's employee fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Board's employee may, for the purpose of preparing his defence—

- (i) inspect within five days of the order or within such further time not exceeding five days as the Inquiring Authority may allow, the documents specified, if any;
- (ii) submit a list of witnesses to be examined on his behalf;
- (iii) give a notice within ten days of the order or within such further time not exceeding ten days as the Inquiring Authority may allow for the discovery or production of any documents which are in the possession of the Board.

NOTE.—The Board's employee shall indicate the relevance of the documents required by him to be discovered or produced by the Board.

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the document by such date as may be specified in such requisition:

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in clause (12), the Board or any authority under it having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority.

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or the security of the State, it shall inform the enquiring authority accordingly and the enquiring authority shall, on being so informed and satisfied about the genuineness of the reasons recorded for the non-production of the aforesaid documents, communicate the information to the Board's employee and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Board's employee. The Presenting Officer shall be entitled to re-examine the witnesses on any points on

which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit. Where any new matter has been introduced with the leave of the enquiring authority, the witness can be cross-examined on that matter.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Board's employee or may itself call for new evidence or recall and re-examine any witness and in such case the Board's employee shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and on adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Board's employee shall be entitled to have, if he demands it, as copy of the list of further the record. The inquiring authority may also allow the Board's employee to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice. Where a witness has been recalled and re-examined, the Board's employee will have the right to further cross-examine him on the points brought out during the re-examination.

NOTE.—New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) When the case for the disciplinary authority is closed, the Board's employee shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Board's employee shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Board's employee shall then be produced. The Board's employee may examine himself in his own behalf if he so prefers. The witnesses produced by the Board's employee shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the Board's employee closes his case, and shall, if the Board's employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Board's employee to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the Board's employee, or permit them to file written briefs of their respective case, if they so desire.

(20) If the Board's employee to whom a copy of the articles of charge has been delivered does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this bye-law, the inquiring authority may hold the inquiry *ex-parte*.

(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in bye-law 8 has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of bye-law 8 should be imposed on the Board's employees, that authority unless it is competent to impose such of the penalties shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties, according to the Schedule.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the Board's employee such penalty as it may deem fit in accordance with these bye-laws.

(22) Whenever any inquiry authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiry authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

(23) (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain—

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) the defence of the Board's employee in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and the reasons therefor.

*Explanation.*—If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include—

- (a) the report prepared by it under sub-clause (i);
- (b) the written statement of defence, if any, submitted by the Board's employee;
- (c) the oral and documentary evidence produced in the course of the inquiry;
- (d) written briefs, if any, filed by the presenting officer or the Board's employee or both during the course of the inquiry; and
- (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

**12. Action on the inquiry report.**—(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of bye-law 11 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of bye-law 8 should be imposed on the Board's employee, it shall, notwithstanding anything contained in bye-law 13, make an order imposing such penalty.

(4) (i) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (v) to (ix) of bye-law 8 should be imposed on the Board's employee, it shall—

- (a) furnish to the Board's employee a copy of the report of the inquiry held by it and its findings on each article of charge, or, where the inquiry has been held by an inquiring authority, appointed by it, a copy of the report of such authority and a statement of its findings on each article of charge together with brief reasons for its disagreement, if any, with the findings of the inquiring authority;
- (b) give the Board's employee a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under bye-law 11.

(ii) The disciplinary authority shall consider the representation if any made by the Board's employee in response to the notice under sub-clause (i) and determine what penalty if any should be imposed on the Board's employee and pass appropriate orders in the case as it may deem fit.

**13. Procedure for imposing minor penalties.**—(1) Subject to the provisions of clause (3) of bye-law 12, no order imposing on a Board's employee any of the penalties specified in clauses (i) to (iv) of bye-law 8 shall be made except after—

- (a) informing the Board's employee in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is

- proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;
- (b) holding an inquiry in the manner laid down in clause (3) to (23) of bye-law 11, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
  - (c) asking the representation if any submitted by the Board's employee under sub-clause (a) and the record of inquiry, if any, held under clause (b) into consideration; and
  - (d) recording a finding on each imputation of misconduct or misbehaviour.
- (1a) Notwithstanding anything contained in clause (b) of sub-clause (1), if in a case it is proposed, after considering the representation, if any, made by the Board's employee under clause (a) of that sub-clause, to withhold increments of pay for a period exceeding 3 years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the matter laid down in sub-clauses (3) to (23) of bye-law 11 before any order imposing on the Board's employee any such penalty.
- (2) The record of the proceedings in such cases shall include—
- (i) a copy of the intimation to the Board's employee of the proposal to take action against him;
  - (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
  - (iii) his representation, if any;
  - (iv) the evidence produced during the inquiry;
  - (v) the findings on each imputation of misconduct or misbehaviour; and
  - (vi) the orders on the case together with the reasons therefor.

**14. Communication of orders.**—Orders made by the disciplinary authority shall be communicated to the Board's employee who shall also be supplied with a copy of the report of the inquiry, if any, held by the disciplinary authority and a copy of its findings on each article of charge, or, where the disciplinary authority is not the inquiring authority and a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority (unless they have already been supplied to him).

**15. Common Proceedings.**—(1) Where two or more Board's employees are concerned in any case, the Central Government or any other authority competent to impose the penalty of dismissal from service on all such Board's employees may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

**NOTE.**—If the authorities competent to impose the penalty of dismissal on such Board's employees are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.

- (2) Subject to the provisions of clause (3) of bye-law, 9, any such order shall specify—
- (i) the authority which may function as the disciplinary authority for the purpose of such common proceeding;
  - (ii) the penalties specified in bye-law 8 which such disciplinary authority shall be competent to impose;
  - (iii) whether the procedure laid down in bye-law 11 and bye-law 12 or bye-law 13 shall be followed in the proceeding.

**16. Special procedure in certain cases.**—Notwithstanding anything contained in bye-law 11 to bye-law 15—

- (i) where any penalty is imposed on a Board's employee on the ground of conduct which has led to his conviction on a criminal charge, or
- (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these bye-laws, or
- (iii) where the Central Government is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these bye-laws, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.



**17. Provisions regarding officers lent to other authorities.**—(1) Where the services of a Board employee are lent to any other authority (hereinafter in this rule referred to as the borrowing authority) the borrowing authority shall have the powers of the 'Appointing Authority' for the purpose of placing him under suspension, and of the 'disciplinary authority' for the purpose of taking a disciplinary proceedings against him.

Provided that the borrowing authority shall forthwith inform the Board which lent his services of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding taken against such lent Board employee—

- (i) If the 'Borrowing authority' is of the opinion that any of the penalties specified in clauses (i) to (iv) of Bye-law 8 should be imposed on him it may in consultation with the Board, pass such orders as the case as it deems necessary.

Provided that in the event of a difference of opinion between the borrowing authority and the Board, the services of the Board employee shall be replaced at the disposal of the Board.

- (ii) If the 'Borrowing authority' is of the opinion that any of the penalties specified in clauses (v) to (ix) of Bye-law 8 should be imposed on him, it shall replace his services at the disposal of the Board and transmit to it the proceedings of the enquiry, and thereupon, the Board may, if it is the Disciplinary Authority pass such orders thereon as it deems necessary, or, if it is not the Disciplinary Authority, submit the case to the Disciplinary Authority which shall pass such orders on the case as it deems necessary.

*Explanation.*—The Disciplinary Authority may make an order under this clause on the record of the inquiry transmitted by the borrowing authority, or after holding such further enquiry as it may deem necessary".

**18. Provisions regarding officers borrowed from Central Government, State Governments, etc.**—(1) Where an order of suspension is made or a disciplinary proceeding is taken against a Board's employee whose services have been borrowed from the Central Government or a State Government, or an authority subordinate thereto, or a local or other authority, the authority lending his services (hereinafter in this bye-law referred to as "the lending authority") shall forthwith be informed of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding taken against the Board's employee—

- (i) if the disciplinary authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of bye-law 8 should be imposed on him, it may, after consultation with the lending authority, pass such orders on the case as it deems necessary:

Provided that in the event of a difference of opinion between the disciplinary authority and the lending authority the services of the Board's employee shall be replaced at the disposal of the lending authority;

- (ii) if the disciplinary authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of bye-law 8 should be imposed on him, the services of the Board's employee shall be replaced at the disposal of the lending authority and the proceedings of the inquiry shall be transmitted to it for such action as it might deem necessary.

#### PART VII—Appeals

**19. Orders against which an appeal lies.**—Notwithstanding anything contained in this Part, no appeal shall lie against—

- (i) any order made by the Central Government;
- (ii) any order of an interlocutory nature or of the nature of a step-in-aid or the final disposal of a disciplinary proceeding, other than an order of suspension;
- (iii) any order passed by an inquiry authority in the course of an inquiry under bye-law 11.

**20. Orders against which appeal lies.**—Subject to the provisions of bye-law 19, a Board's employee may prefer an appeal against all or any of the following orders, namely :—

- (i) an order of suspension made or deemed to have been made under bye-law 7;
- (ii) an order imposing any of the penalties specified in bye-law 8 whether made by the disciplinary authority or by any appellate or reviewing authority;
- (iii) an order enhancing any penalty imposed under bye-law 8;
- (iv) an order which—
  - (a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement; or
  - (b) interprets to his disadvantage the provisions of any such rule or agreement;
- (v) an order—
  - (a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;
  - (b) reverting him while officiating in a higher Service, grade or post to a lower Service, grade or post, otherwise than as a penalty;
  - (c) reducing or withholding the pension or denying the maximum pension admissible to him under the rules;
  - (d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;
- (e) determining his pay and allowances—
  - (i) for the period of suspension, or
  - (ii) for the period from the date of his dismissal, removal, or compulsory retirement from service, or from the date of his reduction to a lower Service, grade, post, time-scale or stage in a time-scale of pay, to the date of his reinstatement or restoration of his service, grade or post, or
- (f) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal, compulsory retirement or reduction to a lower service, grade, post, time-scale of pay or stage in a time-scale of pay to the date of his re-instatement or restoration to his service, grade or post shall be treated as a period spent on duty for any purpose.

*Explanation.*—In this bye-law—

- (i) the expression 'Board's employee' includes a person who has ceased to be in Board's service;
- (ii) the expression 'pension' includes pension, gratuity and any other retirement benefit.

**21. Appellate Authorities.**—(1) A Board's employee including a person who has ceased to be a Board's servant may prefer an appeal against all or any of the orders, specified in bye-law 20 to the authority specified in this behalf in the schedule, or where no such authority is specified—

- (a) to the appointing authority where the order appealed against is made by an authority subordinate to it; or
  - (b) to the Central Government where such order is made by any other authority.
- (2) Notwithstanding anything contained in clause (1)—
- (i) an appeal against an order in a common proceeding held under bye-law 15 shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately subordinate;
  - (ii) where the person who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate.

**22. Period of limitation for appeals.**—No appeal preferred under this Part shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the appellant:

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

**23. Form and contents of appeal.**—(1) Every person preferring an appeal shall do so separately and in his own name.

(2) The appeal shall be presented to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against. It shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language, and shall be complete in itself.

(3) The authority which made the order appealed against shall on receipt of a copy of the appeal, forward the same with its comments thereon together with the relevant records to the appellate authority without any avoidable delay, and without waiting for any direction from the appellate authority.

**24. Consideration of appeal.**—(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether, in the light of the provisions of bye-law 7 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in bye-law 8, the appellate authority shall consider—

- (a) whether the procedure prescribed in these bye-laws has been complied with, and if not, whether such non-compliance has resulted in the violation of any provision of the constitution or in failure of justice;
- (b) whether the findings are justified; and
- (c) whether the penalty imposed is excessive, adequate or inadequate; and pass orders—
- (i) setting aside, reducing, confirming or enhancing the penalty; or
- (ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:

Provided that—

- (i) the appellate authority shall not impose any enhanced penalty which neither such authority nor the authority which made the order appealed against is competent in the case to impose;
- (ii) nor order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced penalty; and
- (iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of bye-law 8 and an inquiry under clause (4) of Bye-law 12 has not already been held in the case, the appellate authority shall, subject to the provisions of bye-law 16, itself hold such inquiry or direct that such inquiry be held and thereafter, on consideration of the proceedings of such inquiry and after giving the appellant an opportunity of making any representation which he may wish to make against such penalty, pass such orders as it may deem fit.

(3) In the case of an appeal against any order specified in bye-law 21, the appellate authority shall consider all the circumstances of the case and pass such orders as it deems just and equitable.

**25. Implementation of orders in appeal.**—The authority which made the order appealed against shall give effect to the orders passed by the appellate authority.

#### PART VIII—Review

**26.** (1) Notwithstanding anything contained in these bye-laws, the Central Government, on its own motion or otherwise, after calling for the records of the case, review any order which is made under these bye-laws and may—

- (a) confirm, modify or set aside the order; or
- (b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the orders; or
- (c) remit the case to the authority which made the order or to any other authority directing such further action or inquiry as it considered proper in the circumstances of the case; or
- (d) pass such other orders as it deems fit:

Provided that—

- (i) an order imposing or enhancing a penalty shall not be passed unless the person concerned has been given an opportunity of making any representation which he may wish to make against such enhanced penalty;
  - (ii) if the Central Government proposes to impose any of the penalties included in clauses (v) to (ix) of bye-law 8 in a case where an inquiry under clause (4) of bye-law 12 has not been held, it shall, subject to the provisions of bye-law 16, direct that such inquiry be held and thereafter on consideration of the proceedings of such inquiry and after giving the person concerned an opportunity of making any representation which he may wish to make against such penalty, pass such orders as it may deem fit.
- (2) No proceeding for review shall be commenced until after—
    - (i) the expiry of the period of limitation for an appeal, or
    - (ii) the disposal of the appeal, where any such appeal has been preferred.
  - (3) An application for review shall be dealt with in the same manner as if it were an appeal under these bye-laws.

#### PART IX—Miscellaneous

**27. Service of orders, notices etc.**—Every order, notice and other process made or issued under these bye-laws shall be served in person on the Board's employee concerned and receipt obtained or communicated to him by registered post with acknowledgement due.

**28. Power to relax time-limit and to condone delay.**—Save as otherwise expressly provided in these bye-laws, the authority competent under these bye-laws to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these bye-laws for anything required to be done under these bye-laws or condone any delay.

**29. Savings.**—(1) Any proceedings pending at the commencement of these bye-laws shall be continued and disposed of as far as may be in accordance with the provisions of these bye-laws.

(2) Any appeal or application for review pending at or preferred after the commencement of these bye-laws on any matter on which an appeal or review lies under these bye-laws shall be considered and orders thereon shall be passed in accordance with these bye-laws.

**30. Removal of doubts.**—If any doubt arises as to the interpretation of any of the provisions of these bye-laws, the matter shall be referred to the Central Government who shall decide the same.

#### SCHEDULE

Description of Post and/or Class	Appointing authority	Authority competent to impose penalties and penalties which it may impose (with reference to item numbers in bye-law 8)	Appellate authority
		Authority Penalties	
All Class I Posts	Chairman (on the recommendation of the Executive Committee)	Central Government	All Central Government
All Class II Posts and Class III Posts carrying a maximum pay of Rs. 500/- or more		Central Government	All Central Government
All other Class III Posts	Chairman	Chairman	All Central Government
Class IV Posts	Secretary	Secretary	All Chairman

[No. F.18(1)Tex(D)/68.]

A. G. V. SUBRAMANIAN, Under Secy.

## (Office of the Joint Chief Controller of Imports and Exports)

(Central Licensing Area)

## CANCELLATION ORDER

*New Delhi, the 19th December 1968*

**S.O. 201.**—M/s. Harijan Udyog Shala, Kingsway, Delhi, were granted an import licence No. P/AU/1212108/C for Rs. 4437 on 30th March 1968 for the import of Sulphonate Fish and Animal Oils etc. They have applied for a duplicate of the Customs Purpose Copy of the said licence on the ground that the original Customs Purpose Copy of the licence has been lost or misplaced. It is further stated by them that the original licence was not registered with any customs house and has not been utilised at all.

In support of this contention the applicant has filed an affidavit. I am satisfied that the original Customs Purpose Copy of licence No. P/AU/1212108/C dated 30th March 1968 has been lost, and direct that a duplicate licence should be issued to the applicant. The Original Customs Purpose Copy of licence is cancelled.

[No. Leather/11/Jan-March-67/SC-III/CLA.]

## ORDER

*New Delhi, the 2nd January 1969*

**S.O. 202.**—A licence No. P/SS/1607806/C, dated 23rd September, 1967 of the value of Rs. 800 for import of Copper and Zinc was issued to M/s. Chhabra Engineering Works, 15-B, Industrial Estate, Batala subject to the condition that the goods imported under it shall be used in the licence holder's factory and no portion thereof shall be sold to any other party or utilised or permitted to be used in any other manner.

2. Thereafter, a show cause notice No. C-9/67/ENF/CLA/5361, dated 2nd September, 1968 was issued asking them to show cause within 15 days as to why the said licence in their favour should not be cancelled on the ground that the Central Government is satisfied that the licence will not serve the purpose for which it has been granted in terms of Clause 9, sub-clause (cc) of Import (Control) Order, 1955.

3. M/s. Chhabra Engineering Works, 15-B, Industrial Estate, Batala have not sent any reply to the said show cause notice.

4. Having regard to what has been stated in the preceding paragraph, the undersigned is satisfied that the licence in question should be cancelled or otherwise rendered ineffective. Therefore, the undersigned, in exercise of the powers vested in him under Clause 9, sub-clause (cc) of the Imports (Control) Order, 1955 hereby cancel the licence No. P/SS/1607806/C, dated 23rd September, 1967 for Rs. 800 issued in favour of M/s. Chhabra Engineering Works, 15-B, Industrial Estate, Batala.

[No. C-9/67/ENF/CLA/10190.]

J. S. BEDI,

Jt. Chief Controller of Imports and Exports.

## (Office of the Chief Controller of Imports and Exports)

## ORDER

*New Delhi, the 20th December 1968*

**S.O. 203.**—In exercise of the powers conferred by Clause 9 of the Imports (Control) Order, 1955, dated 7th December, 1955 as amended, the undersigned hereby cancels both copies of Import Licence No. G/AU/1034637, dated 31st January, 1968 for the import of Spare Parts for Earth Moving Machinery valued at Rs. 70,000 issued in favour of Executive Engineer, Mechanical Drainage Division, Karnal (Haryana).

The reason for cancellation is that both copies of import licence have been lost by the L/A holder, viz., M/s. Eastern Associates Co., New Delhi.

[No. 2/SG/217/67-68/PLS.]

P. LAL,

Jt. Chief Controller of Imports & Exports,  
for Chief Controller of Imports & Exports.

## (Office of the Chief Controller of Imports &amp; Exports)

## ORDER

*New Delhi, the 6th January 1969*

**S.O. 204.**—Messrs. The Banga Luxmi Soap Works Pvt. Ltd., Calcutta, were granted Licence No. P/D/2163659, dated 24th May, 1968 from GCA for import of Aromatic Chemicals and Natural Essential Oils valued at Rs. 8,300. They have requested for issue of duplicate copy of Customs purposes copy of the licence on the ground that the original Customs purposes copy of the licence has been lost by them. It has been further reported by the licensee that the licence was not utilised at all and was not registered with any Customs Authority.

In support of their contention the applicant have filed an affidavit. The undersigned is satisfied that the original Customs purposes copy of licence No. P/D/2163659, dated 24th May, 1968 has been lost and directs that a duplicate Customs purposes copy of the said licence should be issued to them. The original Customs purposes copy of licence is cancelled. A duplicate Customs purposes copy of licence is being issued separately.

[No. Toilet/406/67-68/52/RM-3/234.]

G. D. BAHL,

Dy. Chief Controller of Imports &amp; Exports.

**MINISTRY OF FOOD, AGRICULTURE, COMMUNITY DEVELOPMENT  
AND COOPERATION**

## (Department of Agriculture)

*New Delhi, the 2nd January, 1969*

**S.O. 205.**—Whereas the State Government of Punjab have in pursuance of clause (iii) of sub-section (2) of section 3 of the Seeds Act, 1966 (54 of 1966), nominated the Director of Agriculture Punjab, as a member of the Central Seed Committee;

Now, therefore, in pursuance of the provisions of section 3 of the Seeds Act, 1966 (54 of 1966), the Central Government hereby makes the following amendment in the Notification of the Government of India in the Ministry of Food, Agriculture, Community Development and Cooperation (Department of Agriculture) No. S.O. 3490, dated the 26th September, 1968, namely:—

In the said Notification, under the heading "Representatives of State Government", after serial number 19 and the entries relating thereto, the following serial number shall be inserted, namely:—

"19A. Director of Agriculture, Punjab".

[No. 4(6)/67-Seeds Dev.]

B. R. KAPOOR, Under Secy.

**खाद्य, कृषि, सामुदायिक तथा सहकारिता मंत्रालय**

**(कृषि विभाग)**

**नई दिल्ली, 2 जनवरी 1969**

**एस० आर० 206.**—[एफ 4(6)/67 बीज विकास] क्योंकि बीज अधिनियम 1966 (1966 का 54) के अनुभाग 3 के उपअनुभाग (2) के खण्ड (III) के अनुसार पंजाब राज्य सरकार ने पंजाब के कृषि निदेशक को केन्द्रीय बीज समिति के सदस्य के तौर पर मनोनीत किया है।

अतः अब बीज अधिनियम 1966 (1966 का 54) के अनुभाग 3 के उपबन्धों के अनुसार, भारत सरकार के खाद्य, कृषि सामुदायिक विकास तथा सहक

विभाग) की अधिसूचना संख्या एस०ओ० 3490 दिनांक 26 सितम्बर 1968 में केन्द्रीय सरकार निम्नलिखित संशोधन करती है—

उपरोक्त अधिसूचना में “राज्य सरकारों के प्रतिनिधि” शीर्षक के अन्तर्गत क्रम संख्या 19 के पश्चात् और उससे संबंधित इन्दराज के बाद, निम्नलिखित क्रम संख्या को जोड़ दिया जायेगा:—

“19ए—कृषि निदेशक, पंजाब”।

[सं० 4(6)/67-बीज विकास.]

ब० रा० कपूर, अवर सचिव।

## MINISTRY OF INDUSTRIAL DEVELOPMENT & COMPANY AFFAIRS

(Department of Industrial Development)

New Delhi, the 7th January 1969

S.O. 207.—The Expert Committee constituted *vide* Ministry of Industrial Development and Company Affairs (Department of Industrial Development) Resolution No. 8(38)/Lic. Pol./67 dated the 22nd July, 1967 and designated as the ‘Industrial Licensing Policy Inquiry Committee’ *vide* their Notification of even number dated the 1st January, 1968 is expected to finalise and submit its report to Government by the end of March, 1969. The tenure of the Committee which was extended upto the 31st January, 1969 *vide* Notification of even number dated the 10th June, 1968 is, therefore, now extended upto the 31st March, 1969.

[No. 8(38)Lic. Pol./67.]

R. C. SETHI, Under Secy.

(Department of Industrial Development)

### ORDER

New Delhi, the 30th December 1968

S.O. 208.—IDRA/6/5.—In exercise of the powers conferred by section 6 of the Industries (Development Regulation) Act, 1951 (65 of 1951) read with Rules 2, 4 and 5 of the Development Councils (Procedural) Rules, 1952, the Central Government hereby appoints the following person to be a member of the Development Council established by the Order of the Government of India, in the Ministry of Industrial Development and Company Affairs No. S.O. /IDRA6/5, dated the 30th April, 1968, the 13th June, 1968 and 28th October, 1968 for the scheduled industries engaged in the manufacture or production of electric motors and of machinery and equipment for the generation, transmission and distribution of electric energy (excluding house service meters and panel instruments) *vide* Shri N. Venkatesan, Chief Planning and Development, Bharat Heavy Electricals Ltd., New Delhi.

Shri H. C. Keskar,  
Chief Planning, Development and Sales Organisation,  
Bharat Heavy Electricals Ltd.,  
New Delhi.

The Central Government also directs that the following amendment shall be made in the said Order. After entry No. 24 relating to Shri J. C. Dikshit, the following entries shall be inserted, namely:—

25. Shri H. C. Keskar,  
Chief Planning, Development and Sales Organisation,  
Bharat Heavy Electricals Ltd.,  
New Delhi.

[No. EEI-19(20)/63.]

R. J. MENON, Dy. Secy.

## औद्योगिक विकास तथा समवाय-कार्य मंत्रालय

(औद्योगिक विकास विभाग)

आदेश

नई दिल्ली, 30 दिसम्बर 1968

एस० ओ० 209-आई० ४० आर० ए०/6/5.—उद्योग (विकास तथा नियमन) अधिनियम, 1951 (1951 का 65) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए विकास परिषदें (कार्याविधि) नियम, 1952 के नियम 2, 4 और 5 के साथ पढ़ते हुए केन्द्रीय सरकार एतद्वारा निम्नलिखित व्यक्ति को, श्री एन० वेंकटेशन, आयोजन तथा विकास प्रमुख भारत हैवी इलेक्ट्रिकल्स लि०, नई दिल्ली के स्थान पर भारत सरकार के औद्योगिक विकास तथा समवाय-कार्य मंत्रालय के आदेश सं० एस० ओ० आई० डी० आर० ए०/6/5 दिनांक 30 अप्रैल, 1968, 13 जून, 1968 तथा 28 अक्टूबर, 1968 के द्वारा स्थापित विद्युत मोटरों एवं विद्युत शक्ति उत्पन्न करने, पारेषण तथा वितरण हेतु (घरेलू काम में आने वाले मोटरों और पेनल यंत्रों को छोड़कर) निर्माण या उत्पादन में लगे अनुसूचित उद्योगों की विकास परिषद का सदस्य नियुक्त करती है :—

श्री एच० सी० केसकर,

आयोजन विकास तथा बिजली संगठन प्रमुख,

भारत हैवी इलेक्ट्रिकल्स लि०, नई दिल्ली ।

केन्द्रीय सरकार यह भी निदेश देती है कि उपरिलिखित आदेश में श्री जे० सी० दीक्षित से सम्बन्धित प्रविष्टि सं० 24 के पश्चात् निम्नलिखित प्रविष्टि निविष्ट की जायेगी, अर्थात् :—

25 श्री एच० सी० केसकर,

आयोजन विकास तथा बिजली संगठन प्रमुख,

भारत हैवी इलेक्ट्रिकल्स लि०, नई दिल्ली ।

[सं० ई० ई० आई०—19 (20): 63.]

पी० जे० मेनन,

उप-सचिव, भारत सरकार ।

(Department of Industrial Development)

ORDER

New Delhi, the 7th January 1969

S.O. 210.—In pursuance of sub-clause (2) of clause 9 of the Motor Cars (Distribution & Sale) Control Order, 1959, the Central Government hereby specifies Shri A. Chowdhary, I.A.S., Director, Public Vehicles Department, Government of West Bengal, Calcutta as the authority before whom the books, accounts and records of every manufacturer and every dealer under the said Order in the State of West Bengal shall be produced for inspection.

[No. 8(30)/68-A.E.Ind.(I).]

R. V. SUBRAHMANYAN, Jt. Secy.



**(Indian Standards Institution)***New Delhi, the 31st December 1968*

**S.O. 211.**—In pursuance of sub-regulation (4) of regulation 14 of the Indian Standards Institution (Certification Marks) Regulations, 1955, as amended from time to time, it is hereby notified that the licences No. CM/L-1350, CM/L-1630 and CM/L-1631, particulars of which are given below, have been cancelled with effect from 1 January 1969.

Licence No. and Date	Name and Address of the Licensee	Article/Process covered by the licence cancelled	Relevant Indian Standard
CM/L-1350 14-10-1966.	M/s. D. Waldie & Co. (Lead Oxides) Ltd., G.T. Road, Kon- nagar, Distt. Hooghly having their office at Gillander House Netaji Subhas Road, Calcutta-1.	Red lead, type B & C Brand: 'GRIFFIN'.	IS: 57-1965 : Specifi- cation for red lead for paint and joint- ing purposes.
CM/L-1630 9-2-1968	Do.	Basic carbonate of lead (white lead) for paints.	IS: 34-1950 : Specifi- cation for basic carbonate of lead (white lead) for paints.
CM/L-1631 9-2-1968	Do.	Zinc oxide for paints.	IS: 35-1950 : Specifi- cation for Zinc oxide for paints.

[No. CMD/55 : 1350]

(Dr.) A. K. GUPTA,  
Deputy Director General**CENTRAL ELECTRICITY AUTHORITY***New Delhi, the 8th January 1969*

**S.O. 212.**—In exercise of the powers conferred by Sub-Section 6 of Section 3 of the Electricity (Supply) Act 1948, the Central Electricity Authority hereby appoints Shri C. K. Chandran, Director, Central Water and Power Commission (Power Wing), on deputation to the post of Member-Secretary, Northern Regional Electricity Board, New Delhi, with effect from the forenoon of the 1st January, 1969 until further orders.

[No. 21/3/66-Adm. I(PW).]

M. M. DHAWAN, Under Secy.  
for Chairman.**MINISTRY OF EDUCATION****(Cultural Activities Division I)****[CAI(I) Section]****ARCHAEOLOGY***New Delhi, the 26th December 1968*

**S.O. 213.**—Whereas the Central Government is of opinion that the ancient and historical monuments specified in the Schedule to this notification have ceased to be of national importance;

Now, therefore, in exercise of the powers conferred by section 35 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), the Central Government hereby declares that the monuments aforesaid have ceased to be of national importance for the purposes of the said Act.

#### THE SCHEDULE

Serial No.	State	District	Locality	Name of monuments/sites	Protection Notification No. & Date.
1	2	3	4	5	6
1.	Andhra Pradesh	Guntur	Pullareddigudem	Land measuring 30 cents around the Museum.	(i) MD, 132, 22-3-1937. (ii) MD, 245, 11-6-1937.
2.	"	"	"	Mound adjacent to the hillock known as Kundallagutta.	(i) MD, 194, 1-12-1926. (ii) MD, 30, 18-2-1927.
3.	"	"	"	Mounds with ancient remains.	(i) MD, 25, 8-2-1935. (ii) MD, 52, 5-4-1935.
4.	"	"	"	Mounds with remains of ancient buildings between the hill of Nagar-Junikonda and Pullareddigudem.	(i) MD, 194, 1-12-1926. (ii) MD, 30, 18-2-1927.
5.	"	Srikakulam	Neelayyavalsa	Hillock together with Pandava Pancha.	(i) MD, 18, 4-3-1936. (ii) MD, 200, 15-5-1936.

[No. 4/13/67-CAI(I).]

P. GANGULEE, Dy. Secy.

#### MINISTRY OF WORKS, HOUSING AND SUPPLY

(Deptt. of Works and Housing)

(Directorate of Estates)

New Delhi, the 7th January 1969

**S.O. 214.**—In pursuance of the provisions of rule 45 of Fundamental Rules, the President hereby directs that, with effect from the 15th January, 1969, the following amendment shall be made in the notification of the Government of India in the late Ministry of Works, Housing and Rehabilitation (Department of Works and Housing No. S.O. 1532, dated the 28th May, 1963, applying the Allotment of Government Residences (General Pool in Delhi) Rules, 1963, to the allotment of Government residences in Bombay, namely :—

In the said notification, after item (4), the following item shall be inserted, namely:—

'(4) (a) for S.R.-317-B-20, the following shall be substituted, namely:—

"S.R.-317-B-20—*Sharing and sub-letting of residences, etc.*—(1) No officer shall share the residence allotted to him or any portion thereof, or any of the out-houses, garages and stables appurtenant thereto, except with the prior permission of the Director of Estates obtained in such form and manner as may be prescribed by him from time to time.

Provided that such permission shall be granted for sharing only with the following categories of persons, namely:—

- (a) Central Government servants, eligible for allotment of accommodation in the general pool and those not so eligible;
- (b) staff of Semi-Government Organisations;
- (c) staff of a body corporate, owned or controlled by the Central Government;
- (d) families of the eligible officers transferred to other stations;
- (e) employees of State Governments;
- (f) retired Central Government servants; and
- (g) close relatives.

*Explanation.*—For the purposes of this sub-rule, the question whether a person is a close relative or not, shall be decided by the Director of Estates.

(2) The servant's quarters, out-houses, garages and stables may be used only for *bona-fide* purposes, including the residence of the servants of the allottee or for such other purposes, as may be permitted by the Director of Estates.

(3) No officer shall sub-let the whole of the residence allotted to him:

Provided that an officer proceeding on leave, may accommodate in the residence any other officer eligible to share Government accommodation as a caretaker for the period specified in S.R.—317-B-11(2), but not exceeding six months.

(4) Notwithstanding the obtaining of the permission referred to in sub-rule (1),—

- (a) any officer who shares or sub-lets his residence, shall do so at his own risk and responsibility and shall remain personally responsible for any rent payable in respect of the residence and for any damage caused to the residence or its precincts or grounds or services provided therein by Government beyond fair wear and tear; and
- (b) such officer shall not, except with the permission of the Director of Estates, charge rent, in excess of the rent payable by him to Government in respect of the portion so shared or sub-let."

[No. F. 12033(11)/67-Pol. II.]

T. K. BALASUBRAMANIAN, Dy. Director  
& *Ex-officio* Under Secy.

## MINISTRY OF TRANSPORT & SHIPPING

(Transport Wing)

New Delhi, the 3rd January 1969

**S.O. 215.**—In exercise of the powers conferred by section 5 of the Seamen's Provident Fund Act, 1966 (4 of 1966), read with paragraph 3 of the Seamen's Provident Fund Scheme, 1966, the Central Government hereby appoints the Senior Deputy Director General of Shipping, Bombay, as a member of the Board of Trustees of the Seamen's Provident Fund and makes the following further amendment in the Notification of the Government of India in the late Ministry of Transport and Aviation, Department of Transport, Shipping and Tourism (Transport Wing) No. S.O. 2878, dated the 20th September, 1966, namely:—

In the said Notification under the heading, "Members", for Serial No. 3 and the entries relating thereto, the following Serial No. and entries shall be substituted namely:—

"3. Senior Deputy Director General  
of Shipping

Representative of the Central  
Government."

[No. 5-MT(15)/68.]

K. V. SANKARAN, Dy. Secy.

## DEPARTMENT OF COMMUNICATION

(P. &amp; T. Board)

## CORRIGENDUM

New Delhi, the 5th December 1968

**S.O. 216.**—In Notification No. 5-53/68-PHB(8) dated the 5th December, 1968 the fifth line viz., "in Anantpur Telephone Exchange, Hyderabad Telephone District" may be read as "in Anantpur Telephone Exchange, Andhra Pradesh Circle".

[No. 5-53/68-PHB.]

D. R. BAHL, Assistant Director General (PHB),

## MINISTRY OF INFORMATION AND BROADCASTING

## ORDER

New Delhi, the 3rd January 1969

**S.O. 217.**—In pursuance of the directions issued under the provisions of the enactments specified in the First Schedule annexed hereto the Central Government after considering the recommendations of the Film Advisory Board, Bombay hereby approves the film specified in column 2 of the Second Schedule annexed hereto in all its language versions to be of the description specified against it in column 6 of the said Second Schedule.

## THE FIRST SCHEDULE

- (1) Sub-Section (4) of the Section 12 and Section 16 of the Cinematograph Act, 1952 (Central Act XXXVII of 1952).
- (2) Sub-Section (3) of Section 5 and Section 9 of the Bombay Cinemas (Regulation) Act, 1953 (Bombay Act XI of 1953).

## THE SECOND SCHEDULE

S. No.	Title of the film.	Length 35 mm	Name of the Applicant	Name of the Producer	Whether a Scientific film or a film intended for educational purposes or a film dealing with news & current events or a documentary film.
1	2	3	4	5	6
1.	Maharashtra News No. 199	300.00 m	Director of Publicity Government of Maharashtra, Bombay.		Film dealing with news and current events (For release in Maharashtra Circuit only).

[No. F. 24/1/68-FP. App. 1318.]

BANU RAM AGGARWAL, Under Secy.

सूचना तथा प्रसारण मंत्रालय

आदेश

नई दिल्ली, 4 जनवरी 1969

**एस० अ० 218.**—इसके साथ लगी प्रथम अनुसूची में निर्धारित प्रत्येक अधिनियम के पब्लिश के अन्तर्गत जारी किये गये निदेशों के अनुसार केन्द्रीय सरकार, फिल्म सलाहकार बोर्ड, बम्बई की सिफारिशों पर विचार करने के बाद, एतद्वारा, इसके साथ लगी द्वितीय अनुसूची के

कालम दो में दी गई फिल्म उसके सभी भारतीय भाषाओं के रूपान्तरों सहित, जिसका विवरण उसके सामने उक्त द्वितीय अनुसूची के कालम 6 में दिया हुआ है, स्वीकृत करती है :—

**प्रथम अनुसूची**

- (1) चलचित्र अधिनियम, 1952 (1952 का 37वां केन्द्रीय अधिनियम) की धारा 12 की उपधारा (4) तथा धारा 16।
- (2) बम्बई सिनेमा (विनियम) अधिनियम 1953 (1953 का 11वां बम्बई अधिनियम) की धारा 5 की उपधारा (3) तथा धारा 9।

**द्वितीय अनुसूची**

क्रम संख्या	फिल्म का नाम	फिल्म की लम्बाई 35 मि० मी०	आवेदक का नाम	निर्माता का नाम	क्या वैज्ञानिक फिल्म है या शिक्षा सम्बन्धी फिल्म है या समाचारों और सामयिक घटनाओं की फिल्म है या डाकुमेंट्री फिल्म है
1	2	3	4	5	6
1	महाराष्ट्र समाचार संख्या 199	300.00 मीटर	प्रचार निदेशक, महाराष्ट्र सरकार, बम्बई।		समाचार और सामयिक घटनाओं से सम्बन्धित फिल्म (केवल महाराष्ट्र सर्किट में रिलीज करने के लिये)

[फाइल संख्या 24/1/68-एफ० पी०-परिशिष्ट 1318.]

बानू राम अग्रवाल, अवर सचिव।

**MINISTRY OF IRRIGATION AND POWER**

**ORDER**

*New Delhi, the 6th January 1969*

**S.O. 219.**—In consideration of the fact that the method of mining including electrical distribution underground at the Deep Shaft Mining Project, Monidih, shall be identical to that of Sudamdih and in the light of relaxation already accorded by the Central Government as per Order No. EL.II-5(12)/62, dated the 3rd August, 1965, of provisions of Rules 118 and 130 of the Indian Electricity Rules, 1956, in favour of M/s. National Coal Development Corporation Ltd., for their Sudamdih Project, the application from the Deputy Chief Engineer (Electrical and Mechanical) of M/s. National Coal Development Corporation Limited, Ranchi, under his reference No. CME/Monidih/68/2582-84 of 6th/8th April, 1968, asking for similar relaxation from the provisions of

Rules 118 and 130 of the Indian Electricity Rules, 1956, in respect of the use of three phase ungrounded systems of supply at 6600 volts and 550 volts for the underground machinery at the +Deep Shaft Mining Project, Monidih, is being specially considered.

The Central Government, therefore, in exercise of the powers conferred on them by sub-rule 2 of Rule 133 of the Indian Electricity Rules, 1956, hereby direct that the main provision of Rule 118 and the provision of Rule 130 of the said Rules in respect of transmission, distribution and use of electrical energy at 3 phase, 6600 volts and 550 volts ungrounded systems of supply for the underground electrical apparatus and machinery proposed to be used in the deep mines of National Coal Development Corporation Limited's Monidih Project shall be relaxed subject to the following conditions:—

- (1) 6600 volts system of supply shall be used only with the big pumps at pit bottom and with the face step-down transformers.
- (2) For the detection of un-balanced condition of the insulation of the 3 phase, 6600 volts ungrounded system of supply an efficient contrivance with a leakage detecting instrument shall be installed in the control room and regularly watched by an attendant. Besides, each of the 6600 volts control gears for the feeders taken down the mines shall be provided with a contrivance with relay to take care and interrupt the supply automatically in the event of a leakage condition due to un-balanced reactance of the insulations of the system.
- (3) All 6600 volts cables and apparatus including face transformers shall be installed in the fresh intake air-ways with a quantity nowhere less than 10,000 cft. per minute and shall be situated 300 metres away from any coal face or goaf edge.
- (4) The 550 volts system off each face transformer shall remain grounded through 3 phase star connected reactance and the relay in conjunction with the said device shall take care and automatically interrupt the supply in the event of lowering down of the insulation level of any particular phase to the value of 4000 ohms.
- (5) Each face transformer shall be protected from the main distribution board by 6600 volts circuit-breaker rated to the ratings to the transformer. Besides, each transformer shall be provided with 6600 volts isolator on the primary side and rated 550 volts circuit breaker on the secondary side and the 6600 volts isolator shall be electrically inter-locked with the 550 volts circuit breaker.
- (6) Adequate steps shall be taken to ground efficiently all metallic coverings of cables, electrical equipment, apparatus, fittings, machinery, etc. at both 6600 volts and 550 volts used underground to the electrodes installed in the mine so that the earth conduit or the circuit in connection therewith is electrically and mechanically continuous and the ohmic value of the resistance of the circuit between any two points does not exceed the value of 10 ohms under any circumstances.
- (7) No electrical apparatus and cables shall be used in roadways or sites where adequate measures for treatment of coal dust and suppression thereof have not been taken.

Provided that—

- (a) the aforesaid relaxation shall be valid for such time as the said systems and the said apparatus are in use in the mine and due information shall be given to the Central Government through the Deputy Director of Mines Safety (Electrical-Hqs.) as soon as the systems are discontinued in the mine and the apparatus is taken out of the mine.
- (b) the condition (1) of the Order shall not hold good for putting into commission any non-flame proof 6,600 volts apparatus including non-flame proof motor and control gear for pumping plants to be installed near shaft bottom at the initial stage of development when the site of installation shall be within 900 feet of working faces. Before putting into commission such non-flame proof installation, it may be necessary to obtain exemption under Rule 132 of the Indian Electricity Rules, 1956 from the Deputy Director of Mines Safety (Electrical) of the Electrical Circle concerned, from the operation of Rule 126 of the said rules under suitable conditions as may be stipulated in the interest of safety.

*New Delhi, the 10th January 1969*

**S.O. 220.**—In exercise of the power conferred by Sub-rule (2) of Rule 133 of the Indian Electricity Rules, 1956 the Central Government hereby direct that the provisions of—

- (i) Rule 119(i)(a);
- (ii) Rule 122(g), and
- (iii) Rule 123(5), (6) and (7)

of the said rules shall be relaxed in respect of the use of following apparatus in conjunction with one Special type 400 litres Bucket Chain Excavator Serial No. 341:—

- (1) 2 Nos. 400 amps each 10 KV being used on 3.3 KV circuit gang operated isolating switches, housed in dust proof cubicles in the excavating machine, Siemens make, serial Nos. SP 26703 and SP 32167, one being used as bottom isolator at the Bucket Chain Excavator and the other being used top isolator in the said excavator;
- (2) One 400 amps, 6 KV being used on 3.3 KV circuit, circuit breaker, Siemens make, Serial No. S-30624511 controlling 3.3 KV, supply to 425 KVA transformer installed in the excavator;
- (3) One 425 KVA, 3.3 KV/433 volts transformer, Siemens make Sl. No. T 229823, neutral of medium pressure system earthed;
- (4) One length of 600 metres 50 sq.m.m., 4 core, (three power cores and one earth core), 6 KV being used on 3.3 KV circuit, special type rubber insulated and Neoprene sheathed unarmoured and unscreened flexible trailing cable for transmitting 3.3 KV supply to the excavator;
- (5) Short lengths of unarmoured flexible cables for interconnection, between transformer and its controlling switches on 3.3 KV side and on the medium voltage side and also between different medium pressure motors and their control gear installed in the excavator—

in the Open Cast Mine at Neyveli of M/s. Neyveli Lignite Corporation Limited to the extent that (1) in relaxation of Rule 119(1)(a), one 425 KVA 3.3 KV/433 volts, 3 phase transformer and 3.3 KV isolating switches and also 3.3 KV oil circuit breaker installed in the excavator for controlling 3.3 KV supply to the transformer may not be fixed apparatus as being installed on the portable excavator moving from place to place the same having a portable sense; (2) in relaxation of Rule 122(g), unarmoured and unscreened 3.3 KV flexible cable used for supplying 3.3 KV energy between isolating switches and also between 3.3 KV oil circuit breaker and primary side of 425 KVA transformer and also unarmoured and unscreened medium voltage flexible cables used for inter connection between different motors and their control gear installed in the excavator in permanent fixture generally in conduits except in certain parts where the cable could not be encased in metallic casing to permit the movement or swing, booms and other parts, and (3) in relaxation of sub-rule (5), (6) and (7) of Rule 123, 3.3 KV flexible trailing cable supplying 3.3 KV energy to the excavator shall not be provided with flexible metallic screening or pliable armouring and the said flexible cable not exceeding 600 metres in length may be used and that the relaxation shall be subject to the following conditions:—

- (1) 3.3 KV supply to the flexible cable shall be provided with earth leakage protection.
- (2) The over current trips of the circuit breaker controlling 3.3 KV supply to 425 KVA transformer installed in the excavator shall be in keeping with the rating of the transformer.
- (3) The flexible trailing cable shall be connected to the electric supply system and to the machine by properly constructed connector boxes or totally enclosed safe attachments.
- (4) The excavating machine along with the flexible trailing cable shall be worked and handled with due care so as to avoid danger arising out of any electrical defect or in the use. The insulation resistance of the high voltage circuit including the transformer shall at no time be less than 10 megohms.
- (5) The flexible trailing cable shall be examined in each shift by a competent person to ascertain whether the cable is in safe and sound condition. In case of any defect or damage noticed in the aforesaid cable in course of such examination, the same shall forthwith be withdrawn from further use and shall not be used again until the defect is duly repaired by proper vulcanised joint under the direct supervision of a competent person, specially trained for the purpose.

The results of examinations, test, etc., carried out on the flexible trailing cable shall be recorded in a bound book, especially maintained for the purpose.

- (6) Those parts of the unencased flexible cables used for wiring of the ancillary equipments in the excavator shall be examined daily by the competent person to ascertain whether there has been any damage on the same. In case any damage or defect is noticed such damage or defect shall be forthwith repaired in a satisfactory manner so as to avoid danger.
- (7) The earthing of switch gear frames and the frames and bed plates of motors, transformer, etc., in the excavator shall always be maintained in perfect condition.
- (8) 433 volts system in the excavator shall be covered by suitable earth leakage protection.
- (9) The operator of the excavator shall be trained and duly authorised for operating the excavator with competency and due care to avoid danger.

Provided that the aforesaid relaxation shall be valid for such time as the said machine is in use in the mine and due information shall be given to the Central Government through the Deputy Director of Mines Safety (Electrical) as soon as the machine is taken out of the mine.

[No. EL.II-6(1)/68.]

M. RAMANATHAN, Dy. Director (Power).

## MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION

(Department of Labour and Employment)

*New Delhi, the 4th January 1969*

**S.O. 221.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Bombay, in the industrial dispute between the employers in relation to Messrs Ambica Steam Navigation Company Limited, Bombay, and their workmen, which was received by the Central Government on the 1st January, 1969.

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT NO. 2, BOMBAY.

REFERENCE NO. CGIT-2/34 OF 1963

#### **PARTIES :**

Employers in relation to M/s. Shri Ambica Steam Navigation Company Ltd.,  
Bombay.

AND

Their workmen.

#### **PRESENT :**

Shri N. K. Vani, Presiding Officer.

#### **APPEARANCES :**

*For the Employers :* Shri M. V. Patel, Advocate with Sarvashri Y. Krishnan and N. M. Pathak, Advocates.

*For the workmen :* Shri H. K. Sowani, Advocate with Shri K. A. Shaikh, Asstt. Secretary, Transport and Dock Workers' Union, Bombay.

STATE : Maharashtra.

INDUSTRY : Ports and Docks.

Industry : PORTS AND DOCKS.

*Bombay, the 24th December, 1968*

#### **AWARD**

By order No. 28/65/67-LR.III dated 4th August, 1967, the Central Government referred to Central Government Industrial Tribunal, Bombay for adjudication, an industrial dispute existing between the employer in relation to M/s. Shri Ambica Steam Navigation



Co. Ltd., Bombay and their workmen represented by the Transport and Dock Workers' Union, Bombay, in respect of the matter specified in the following schedule:—

#### SCHEDULE

"Whether the termination of service of Messrs. S. K. Joshi, B. Sheikh Ismail and R. S. Shirdhankar amounts to retrenchment under Section 25F or under Section 25FFF of the Industrial Disputes Act, 1947 and if so, to what relief they are entitled?"

2. Later on the Central Government transferred this reference to this Central Government Industrial Tribunal-cum-Labour Court No. 2, Bombay for adjudication, by its order No. 22/8/68/LR/III dated 24th November, 1968.

3. The circumstances giving rise to this dispute may be stated in brief as follows:—

4. M/s. Shri Ambica Steam Navigation Co. Ltd., Bombay (hereinafter referred to as 'Company') is a shipping company carrying on the business of transport of goods and merchandise by sea in its vessels. It operates between various ports of Indian coasts. In the year 1942, it had one ship by name 'Cossipore'. The same was scrapped in the year 1955. In 1945, it acquired two ships 'Ambika' and 'Lakshmi'. Both of them were scrapped in the year 1957. In the year 1956, it acquired a ship namely 'Asha'. It was laid up in the stream since 1966 and ultimately it was scrapped in the year 1967.

5. The Company had engaged certain Dock Staff on the shore. Mr. S. K. Joshi was engaged as an Asstt. Cargo Supervisor. Mr. B. S. Ismail was employed as a delivery clerk and Mr. R. S. Shirdhankar was working as a sewing Muccadam.

6. After the scrapping of the ship, 'Asha' the Company did not require the services of these three persons. It terminated their services by a notice, addressed to each one of them and individually, on 27th March, 1967.

7. These three employees approached the Union and brought their notices of termination of services to its notice. The Union protested to the management saying that the termination of services of these three workmen was in the nature of retrenchment, and that the same was illegal and improper, as the requirements of the Industrial Disputes Act, 1947 were not followed, before retrenching them. It was also contended that they were not given Retrenchment compensation as laid down under Section 25F and that a copy of the notice was not sent to the Government as required under the law.

8. The Company on the other hand contended that the services of the workmen were terminated because the company no longer required their services due to the closure of the Company and that their termination of services was valid and proper.

9. As the dispute arose between the Company and the Union, regarding the validity of termination of services of these employees, it was reported to the Asstt. Labour Commissioner (C). During the conciliation proceedings the Union and the Company agreed to refer the dispute to adjudication under Section 10(2) of the Industrial Disputes Act, 1947. Hence a joint application was made to the Government and the Government of India, by its order dated 4th August, 1967 referred the dispute mentioned in the Schedule to the Central Government Industrial Tribunal, Bombay for adjudication.

10. The first point for consideration is whether the termination of services of the 3 employees in question amounts to retrenchment under Section 25F of the I.D. Act. My finding on this point is in the negative for the following reasons:—

11. It is common ground that Messrs. S. K. Joshi, B. S. Ismail and R. S. Shirdhankar were in the service of the Company and that their services have been terminated with effect from 30th April, 1967 by giving notice dated 27th March, 1967 to each one of them.

12. The main contention of the Union is that the termination of service of the 3 employees in question amounts to retrenchment under Section 25F of the I.D. Act and that the employees are eligible and entitled to receive compensation as provided for in the said Section in respect of their services.

13. The Company on the other hand in its statement dated November 1967 before the Tribunal contends that it closed down its business due to unavoidable circumstances beyond its control and that the present case regarding the termination of services of the three employees in question falls under the proviso to Section 25FFF of the I.D. Act, 1947 and that these workers are each entitled to only 3 months salary as retrenchment compensation.

14. In the statement dated 23rd October, 1967, the Union says that the ship 'Asha' was laid up in the stream since 1966 and that it was ultimately scrapped in the year 1967. The Company in its reply para. 1, dated November, 1967 says that the ship 'Asha' was

laid up in the stream sometime in January, 1965 and that it was ultimately scrapped in September, 1966. The Company also mentioned the year of scrapping of 'Asha' ship in its notice dated 20th April, 1967 given to each one of the three employees. The Union has not disputed this date of scrapping given by the Company at the time of argument. There can be, therefore, no doubt that the ship 'Asha' was scrapped in 1966.

15. It is common ground that the only ship 'Asha' belonging to the Company has been scrapped. As the ship was scrapped, there was no work left for the employees, and the Company had no other alternative but to stop the department and terminate the services of the workers.

16. The Union contends that only a Section of the Company has been closed and that on account of this, the termination of services of the 3 workmen in question amounts to retrenchment within the meaning of Section 25F of the I.D. Act. It contends that before retrenching any workmen, the Company has to comply with the conditions laid down in Section 25F of the I.D. Act and that in this case the Company has not fulfilled two conditions; viz., (i) paying retrenchment compensation as provided for in the said Section at the time of retrenchment and (ii) serving the appropriate Government with the notice. It further contends that on account of this, the retrenchment of the 3 workmen in question is illegal, void and in-operative.

17. In the present case the workmen in question were served with notices, regarding the termination of service (*vide* copy of notice Annexure 'B' produced by the company). It terminated their services with effect from 1st April, 1967 as it closed down the dock department as there was no work, consequent upon the scrapping of the only ship 'Asha' in October, 1966. Copy of notice Annexure 'B' produced by the Union shows that a copy of the notice in question was sent to the Secretary to the Government of India, Ministry of Labour, Employment and Rehabilitation, New Delhi.

18. Admittedly, before terminating the services of the three employees in question, retrenchment compensation as required under Section 25F at the time of retrenchment was not given to the employees, but notice to appropriate Government has been served. Hence if the termination of service of the employees in question amounts to retrenchment within the meaning of Section 25F of the I.D. Act, 1947, there would be non-compliance with the condition regarding payment of retrenchment compensation, before retrenching the employees concerned.

19. Retrenchment has been defined in Section 2(oo) of the I.D. Act, 1947, as follows:—

2(oo) "Retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action, but does not include

- (a) Voluntary retirement of the workman; or
- (b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (c) Termination of the service of the workman on the ground of continued ill-health.

20. In *Pipriach Sugar Mills Ltd. Vs. Pipriach Sugar Mills Mazdoor Union*, 1956, S.C.R. 872. it is decided as follows:—

"Retrenchment connotes in its ordinary acceptation that the business itself is being continued, but that a portion of the staff, or labour force is discharged as surplusage."

21. It is not the contention of the Union that only portion of the staff of Dock Department was discharged as surplusage. Notice dated 20th April, 1967 Annexure 'B' shows the total number of the workers employed in the department as 4. The services of the same number have been terminated on account of the closure of the Dock Department. It is clear that the services of all the staff of Dock Department concerning with shore work were terminated as the department was closed.

22. The Union contends in para. 7 of the statement that one of the activities of the company came to be closed as a result of the scrapping of the ship 'Asha', that the entire business of the company was not closed, that the business of the company was running and that it was curtailed as a result of the closure of one of its Section. It is further contended that the company may acquire any new ship in the near future and again re-open the closed Section of the business.

23. The correspondence between the company and Assistant Director General of Shipping (*vide* copy of letter dated 6th March, 1964 Annexure 'C' and copy of letter dated 7th October, 1967 Annexure 'C') shows that the company was making efforts to

purchase a ship but it could not do so, due to foreign exchange difficulties. The Company was not having any business with foreign countries. It was doing business only on Indian Coastal line. As it was not possible for the company to earn foreign exchange, it could not purchase any ship. There was no possibility for the company to purchase a new ship in the near future and re-start the business.

24. The company in its reply para. 7 says that it is carrying on the administrative work with the skeleton staff, but it has no shipping business. The company has closed its dock department, terminating the services of the persons concerned. There is no force in the contention of the Union that only one activity of the Company has been closed, and that the shipping business has not been completely closed, as the only ship 'Asha' belonging to the Company has been scrapped since 1966.

25. If the Company is running various departments and each department is independent of the other, there can be a closure of one department, even if the other department of the same company might not have been closed. The principle laid down in the case of *Tulsidas Khimji Vs. F. Jeejeebhoy* and others reported in the Indian Factories Journal, Vol. XIX 1960-61, Page 396 supports this view.

26. As the Dock Department has been closed and as the services of the whole staff of the Dock Department have been terminated, it cannot be said that the termination of the services of three workmen in question is a retrenchment within the meaning of Section 25F of the I.D. Act, 1947. As Section 25F of the I.D. Act does not apply to this case, there was no question of complying with the requirements of Section 25F of the Act. It cannot be, therefore, said that the termination of services of three workmen in question was illegal, improper and void.

27. The learned Advocate Shri Sowani contends that if the present case does not fall within the purview of Section 25F of the Act, the Company will have to pay compensation for closure as required under Section 25FFF(1) of the Act because the closure in this case was not on account of unavoidable circumstances beyond the control of the employer.

28. The learned Advocate Shri Patel for the Company contends that the workmen will not be entitled to notice and compensation in accordance with the provision of Section 25F of the Act as if the workmen had been retrenched under Section 25FFF(1), because the closure of the Shipping business in this case has been on account of unavoidable circumstances beyond the control of the Employer. He further says that the compensation to be paid to each one of the three workmen in question will not exceed his average pay for three months.

29. The important point for consideration is that whether the closure of the shipping business by the Company was on account of unavoidable circumstances beyond the control of the Employer. If it is so, the present case would fall under the proviso to Section 25FFF(1) of the I.D. Act, 1947 and not under Section 25F or 25FFF.

30. The Company had only one ship namely 'Asha'. It was scrapped in the year 1966 September or October. The Company was making efforts to purchase a new ship for carrying on shipping business since March, 1964 (*vide* copy of letter dated 6th March, 1964 addressed to the Company by the Asstt. Director General of Shipping, Annexure 'C' and copy of letter dated 7th October, 1967 to the Asstt. Director General of Shipping by the Company Annexure 'C') but the Company could not secure a ship due to non-availability of Foreign Exchange. As the only ship 'Asha' of the Company was scrapped and it could not get Foreign Exchange for purchasing a new ship, it had to close down the shipping business.

31. The learned Advocate Shri Sowani for the Union contends that the difficulty regarding non-availability of Foreign Exchange is temporary one and that closure of the shipping business due to this difficulty cannot be said due to the circumstances over which the Company had no power or control. In my opinion this argument cannot be accepted.

32. It is not certain as to when the Foreign Exchange would become available. One is not expected to wait indefinitely as there is no certainty regarding the date when the Foreign Exchange would become available. The difficulty regarding non-availability of Foreign Exchange is a circumstance over which the Company has no control.

33. Foreign Exchange policy is laid down by the State. Non-availability of Foreign Exchange is the act of the State, over which the company has no control.

34. Both the parties have pointed out a number of rulings for showing as to what is 'unavoidable circumstances'. There is no dispute about the principle laid down in all these rulings. Every case has to be considered on its facts and circumstances.

35. In short, relying on the principle laid down in:—

- (i) Labour Law Journal Vol. II July—December, 1960, Page No. 1—In the Supreme Court of India between Hathising Manufacturing Company Ltd. and others and Union of India and others.
- (ii) Labour Law Journal Vol. II July—December, 1960, Page No. 198—In the High Court of Judicature at Calcutta between Bhattacharjee Rubber Works (Private) Ltd., and Bhattacharjee Rubber Works Workers' Union and others.

I hold that closure of business by the Company in the present case which I am deciding was on account of unavoidable circumstances beyond the control of the Employer. The present case, therefore, falls under the proviso to Section 25FFF(1). The three employees are each, therefore, entitled to closure compensation of average pay for three months.

36. The learned Advocate Shri Patel for the Company has contended that the reference of dispute in regard to compensation payable as a result of closure and based on a notification after the closure, for adjudication under Section 10(2) would be beyond the competence of the appropriate Government and any award made as a result of such reference would be void. He further contends that such a claim is a matter which has to be investigated under Section 33C(2) of the I.D. Act and the appropriate Government cannot forge an additional remedy by way of reference under Section 10 of the Act.

37. The learned Advocate Shri Sowani for the Union contends that in this case the reference is made for deciding as to whether the termination of services of 3 employees amounts to retrenchment under Section 25F or under Section 25FFF and not for determining the amount and that on account of this, this Tribunal has jurisdiction to pass necessary Award on the strength of the reference made by the Government under Section 10(2) of the Act. I am unable to accept this view for the following reasons.

38. The facts of the present case which I am deciding show that the dispute between the parties was reported to the Asstt. Labour Commissioner (C) and that during the conciliation proceedings both the parties made application to the Central Government for making reference to the Tribunal for deciding the dispute. Only on account of this joint application, the Government referred the dispute to the Central Government Industrial Tribunal, Bombay under Section 10(2) of the Act.

39. In the case of Hind Shippers Private Ltd., and another Vs. Central Government Industrial Tribunal, Dhanbad reported in Indian Factories Journal, Part V, Vol. XXXIII, Page 120, the Patna High Court has held as follows:—

"An industrial dispute to which the provisions of the Industrial Disputes Act, 1947, apply is only one which arises out of an existing industry and not a case where the business had been closed and it is either admitted or found that the closure was real and bonafide. Any dispute arising with reference to an industry which is dead or closed falls outside the purview of the Act. Therefore, a reference of a dispute, in regard to compensation payable as a result of the closure and based on a notification after the closure, for adjudication under Section 10(1) of the Act, will be beyond the competence of the appropriate Government and any award made as a result of such a reference would be void. Such a claim is a matter which has to be investigated under the provisions of Section 33C(2) of the Act and the appropriate Government cannot forge an additional remedy by way of reference under Section 10 of the Act."

40. It is clear from the above ruling that if an industry is closed, the dispute between the parties regarding such industry cannot be referred to the Tribunal by the Government under Section 10(2) of the Act. The remedy for the parties is to take recourse to Section 33C(2) of the Act.

41. Though the question regarding the jurisdiction of this Tribunal was raised before me at the time of arguments the same was allowed to be taken, because it involves a law point which goes to the root of the case.

42. Relying on the Patna High Court ruling referred to above I hold that the present reference made by the Government was beyond the competence of the appropriate Government and that this Tribunal has no jurisdiction to pass any Award.

43. This reference, therefore, fails.

44. Before I part with this case, I would like to refer to the fair attitude of the Company towards these 3 employees in question. After the only ship 'Asha' was laid up in stream sometime in June, 1965 the Company had absolutely no work for them. Even then the Company continued to pay the salary of these workmen till the end of March, 1967.

45. The Company has given pay to these workmen even after the ship was scrapped in September or October, 1966. It also offered alternative job to the workmen in question but they did not accept the same. It cannot be blamed for this.

46. The Company in its reply (para. 15) clearly admits that the termination of the services of the workmen in question falls under the proviso to Section 25FFF(1) and that each one of them is entitled to 3 months salary as compensation. As the Company has shown its willingness to pay each of the 3 workmen closure compensation for 3 months, it would be better, if the Company on its own accord pays the amount of closure compensation due to each workmen, instead of forcing them to take recourse under Section 33C(2) of the I.D. Act.

47. In the end I pass the following order:—

ORDER

(i) Reference is dismissed.

(ii) No order as to costs.

(Sd.) N. K. VANI,

Presiding Officer,

Central Government Industrial

Tribunal-cum-Labour Court No. 2, Bombay.

24-12-68.

[No. 28/65/67-LRHL]

*New Delhi, the 10th January 1969*

**S.O. 222.**—In exercise of the powers conferred by sub-sections (1) and (2) of section 8 of the Dock Workers (Regulation and Employment) Act, 1948 (9 of 1948), the Central Government hereby makes the following rules further to amend the Dock Workers (Advisory Committee) Rules, 1962, namely—

1. **Short Title.**—(i) These rules may be called the Dock Workers (Advisory Committee) First Amendment Rules, 1969.

(ii) They shall come into force on the date of their publication in the Official Gazette.

2. In rule 3 of the Dock Workers (Advisory Committee) Rules, 1962, for the word "Vizagapatam" appearing in sub-clause (1) (vii), the word "Visakhapatnam" shall be substituted.

[No. 56/16/68-Fac.II.]

K. D. HAJELA, Under Secy.

**(Department of Labour and Employment)**

*New Delhi, the 4th January 1969*

**S.O. 223.**—In exercise of the powers conferred by sub-section (3) of section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 26th day of January, 1969 as the date on which the provisions of Chapter IV (except sections 44 and 45 which have already been brought into force) and Chapters V and VI (except sub-section (1) of Section 76 and sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Kerala namely:—

Parts of the revenue villages of Rameswaram, and Mattancherry lying outside the Municipal Limits of Mattancherry (i.e. the area known as Wellington Island) in Cochin Taluk in the Ernakulam District.

[No. F. 13(24)/68-HI.]

*New Delhi, the 8th January 1969*

**S.O. 224.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Mangatram Engineering Works, Quarry Road, behind Mangatram Petrol Pump, Bhandup, Bombay-78, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirtieth day of April, 1968.

[No. 8/176/68-PF-II.]

**S.O. 225.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. A. R. Seth and Company, 134, Princess Street, Bombay-2, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the twenty-ninth day of February, 1968.

[No. 8/174/68/PF-II.]

**S.O. 226.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Wanson (India) Private Ltd., Plot No. 8/9, Block D/1, Pimpri, Chindwad Industrial Area, Akurdi, Poona, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirty-first day of December, 1967.

[No. 8/178/68-PF.II(i).]

**S.O. 227.**—In exercise of the powers conferred by the first proviso to section 6 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government, after making necessary enquiry into the matter, hereby specifies that, with effect from the 31st December, 1967, section 6 of the said Act shall, in its application of Messrs. Wanson (India) Private Ltd., Plot No. 8/9, Block D/1, Pimpri, Chindwad Industrial Area, Akurdi, Poona be subject to the modification that for the words "six and a quarter per cent" the words "eight per cent" shall be substituted.

[No. 8/178/68-PF.II(ii).]

**S.O. 228.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Indian Hume Pipe Company Limited, Panambur, *via*, Mangalore, Mysore State have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirty-first day of July, 1968.

[No. 8/185/68-PF.II(i).]

**S.O. 229.**—In exercise of the powers conferred by first proviso to section 6 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government, after making necessary enquiry into the matter, hereby specifies that, with effect from the 31st day of July, 1968, Section 6 of the said Act shall in its application to M/s. Indian Hume Pipe Company Limited, Panambur, *via* Mangalore, Mysore State be subject to the modification that for the words "six and a quarter per cent", the words "eight per cent" were substituted.

[No. 8/185/68-PF.II(ii).]

**S.O. 230.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Ashland Oil Company (Bombay) Private Limited, 32, Vir Nariman Road, Bombay have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirty-first day of August, 1968.

[No. 8/170/63-PF.II.]

**S.O. 231.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Glucose and Foods Limited, 138-141, Government Industrial Estate, Kandirlee West, Bombay-67 have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirtieth day of June, 1967.

[No. 8/195/68/PF.II (i).]

**S.O. 232.**—In exercise of the powers conferred by first proviso to section 6 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government, after making necessary enquiry into the matter, hereby specifies that, with effect from the 30th June, 1967, section 6 of the said Act shall in its application to M/s. Glucose and Foods Limited, 138-141, Government Industrial Estate, Kandirlee West, Bombay-67 be subject to the modification that for the words "six and a quarter per cent" the words "eight per cent" were substituted.

[No. 8/195/68-PF.II (ii).]

**S.O. 233.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Classic Printers, Evergreen Industrial Estate, Block 54, 2nd Floor, Shakti Mills Lane, Bombay-11 have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the Thirtieth day of September, 1968.

[No. 8/173/68-PF.II.]

**S.O. 234.**—Whereas it appears to the Central Government that the employer and the majority of employees in relation to the establishment known as Messrs. T. Srinivasa Reddy, P.W.D. Contractors, No. 8, 7th Cross, Cambridge Road Extension, Ulsoor, Bangalore-8, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the first day of November, 1968.

[No. 8/182/68-PF.II.]

**S.O. 235.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Shyam Talkies, Yeotmal, Maharashtra have agreed that the provisions of the Employees'

Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirty-first day of July, 1968.

[No. 8/190/68/PF-II.]

**S.O. 236.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Organon (India) Ltd., 38, Chowringhee Road, Calcutta-16, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment with effect from the thirty-first day of December, 1968.

[No. 8/180/68/PF-II(i).]

**S.O. 237.**—In exercise of the powers conferred by first proviso to section 6 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government, after making necessary enquiry into the matter, hereby specifies that, with effect from the 31st December, 1968 section 6 of the said Act shall in its application to M/s. Organon (India) Limited, 38, Chowringhee Road, Calcutta-16 be subject to the modification that for the words "six and a quarter per cent", the words "eight per cent" were substituted.

[No. 8/180/68-PF.II (ii).]

**S.O. 238.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Kabbur Industries Private Limited, 84, Balkum Village, Thana, Bombay, Maharashtra State have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirtieth day of April, 1968.

[No. 8/172/68-PF.II (i).]

**S.O. 239.**—In exercise of the powers conferred by first proviso to section 6 of the Employees Provident Funds Act, 1952 (19 of 1952), the Central Government after making necessary enquiry into the matter, hereby specifies that, with effect from the 30th April, 1968 section 6 of the said Act shall, in its application to M/s. Kabbur Industries Private Limited, 84, Balkum Village, Thana, Bombay, Maharashtra State be subject to the modification that for the words "six and a quarter per cent" the words "eight per cent" shall be substituted.

[No. 8/172/68-PF-II (ii).]

**S.O. 240.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Shyam Talkies, Tilkak Road, Akola, Maharashtra have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirty-first day of July, 1968.

[No. 8/192/68-PF.II.]



**S.O. 241.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Queen's Company, 493, Arthur Road, Ghaswala Estate, Tardeo, Bombay-34, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirty-first day of May, 1968.

[No. 8/171/68-PF.II.]

**S.O. 242.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Stanco Traders, Sivakasi, Ramnad District, Madras State have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirty-first day of March, 1968.

[No. 8/92/68-PF.II.]

**S.O. 243.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Prem Engineering, S2/638B Club Road, Varanasi, Uttar Pradesh, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment with effect from the 31st December, 1968.

[No. 8/131/68-PF.II.]

**S.O. 244.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Aswathanarayana & Eswara Consulting Engineers, 49/2, Royapettah High Road, Madras-4 have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the first day of September, 1968.

[No. 8/183/68/PF.II.]

**S.O. 245.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as *H.E.H. The Nizam's Trusts*, 3-6-170 Himayatnagar, Hyderabad, Andhra Pradesh have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment with effect from the 1st January, 1969.

[No. 8/197/68/PF.II.]

**S.O. 246.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs *Accumax Limited*, "Apeksha", Bhaktinagar Station Plot, Rajkot-2 have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment with effect from the 31st January, 1969.

[No. 8/196/68-PF.II (i).]

**S.O. 247.**—In exercise of the powers conferred by first proviso to section 6 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government, after making necessary enquiry into the matter, hereby specifies that, with effect from the 31st January, 1969 section 6 of the said Act shall in its application to M/s Accumax Limited, "Apeksha" Bhaktinagar Station Plot, Rajkot-2 be subject to the modification that for the words "six and a quarter per cent", the words "eight per cent" were substituted.

[No: 8/196/68-PF.II (ii).]

*New Delhi, the 9th January 1969*

**S.O. 248.**—Whereas, it has been shown to the satisfaction of the Central Government that Messrs. Berry Brothers, 135-Canning Street, Calcutta (hereinafter called the said establishment) have failed to comply with certain conditions subject to which exemption was granted to the said establishment under clause (a) of sub-section (1) of section 17 of the Employees' Provident Funds Act, 1952 (19 of 1952), by notification of the Government of India in the late Ministry of Labour and Employment No. S.O. 2014, dated the 9th July, 1963 published in Part II, Section 3(ii) of the Gazette of India, dated the 20th July, 1963, in as much as, they have committed the following defaults, namely,

- (i) failure to submit returns in time;
- (ii) delay in depositing inspection charges to the Statutory Fund;
- (iii) failure to invest provident fund money in the approved Central Government securities to the required extent regularly for the period prior to April, 1968; and
- (iv) failure to make any such investment since April, 1968;

and, whereas, it has further been shown to the satisfaction of the Central Government that the default in compliance with the conditions aforesaid has continued without any sufficient cause in spite of reasonable opportunity having been given to the said establishment to comply with those conditions;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 17 of the said Act, the Central Government hereby cancels with immediate effect the exemption granted to the said establishment under sub-section (1) of Section 17 of the said Act.

[No. 11(76)/67-PF.II.]

#### ERRATA

*New Delhi, the 4th January 1969*

**S.O. 249.**—In the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), No. S.O. 3884, dated the 24th October, 1968, published in the Gazette of India, Part II, Section, 3 sub-section (ii) at page 4949,—

for the words and figures "dated the 11th November, 1961" occurring in the thirty-ninth line of page 4949, read 'dated the 2nd November, 1961'.

[No. F. 6/63/68-HI.]

**S.O. 250.**—In the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), No. S.O. 3885, dated the 24th October, 1968, published in the Gazette of India, Part II, section 3, sub-section (ii) at pages 4949-4950—

for the words and figures "dated the 11th November 1961" occurring in the fourth line of page 4950, read "dated the 2nd November, 1961".

[No. F. 6/63/68-HI-II.]

DALJIT SINGH, Under Secy.

## (Department of Labour and Employment)

*New Delhi, the 6th January 1969*

**S.O. 251.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the Neyveli Lignite Corporation Limited, Post Office Neyveli, Madras, and their workmen, which was received by the Central Government on the 28th December, 1968.

## CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA.

REFERENCE NO. 33 OF 1968

## PARTIES :

Employers in relation to the Neyveli Lignite Corporation Limited, Mines Division,

AND

Their workmen.

## PRESENT :

Shri B. N. Banerjee, Presiding Officer.

## APPEARANCES :

*On behalf of Employers.* —Shri P. Damodaran.*On behalf of Workmen*—Absent.

STATE : Madras.

INDUSTRY : Mining.

## AWARD

By Order No. 4/3/66-LRII., dated July 5, 1968, the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), referred the following dispute between the employers in relation to the Neyveli Lignite Corporation Limited, Mines Division, and their workmen, to this tribunal for adjudication, namely:

“Whether the management of the Neyveli Lignite Corporation Limited, Neyveli, Post Office Neyveli, South Arcot District, Madras State was justified in dismissing Shri Swayambu, Driver Grade II, Mines Branch with effect from the 27th July, 1966? If not, to what relief is he entitled?”

2. Shri P. Damodaran, an officer of Neyveli Lignite Corporation Limited, appeared for the employer company. The workman concerned did not file his written statement, in spite of notice. He did not also attend on the date which was fixed for settling the date of peremptory hearing. The information about the date fixed for peremptory hearing was, however, sent to him by Registered post.

3. This day, however, a trade union named Indian National Mine Workers Federation appeared through somebody and filed an application praying for an adjournment of the hearing. It appears from the failure report of the Conciliation Officer, that a trade union known as Lignite Mines National Workers Union, Neyveli (INTUC) had previously espoused the cause of the workman. Notice of the proceedings before this tribunal was sent to the Lignite Mines National Workers Union. How the Indian National Mine Workers Federation is concerned with this dispute does not appear. This Federation also does not file any authority either from the Lignite Mines National Workers Union or from the concerned workman. In the application, it is no doubt stated that the Lignite Mines National Workers Union is affiliated to the Indian National Mine Workers Federation. This, however, was not proved before me and no material in support of the statement was produced before me, although the Federation was called upon so to do. To all intents and purposes, and without more, Indian National Mine Workers Federation appears to be a stranger Union and I need not proceed on the application made on behalf of this Federation, I, therefore, take up the hearing of the reference *ex-parte*.

4. Dr. A. Xavier, who was the under Manager of Mines at the material time, gave evidence on behalf of the employer company. He proved the chargesheet against the concerned workman (Ext. 1), which reads:

“Sri S. Swayambu, Driver Grade II, has stealthily taken to his house the following articles from Thermal Station and Fertilizer area.

1. Teak wood logs: 3 (4½' and 3')
2. Cement bag: 1
3. Electrical Switch main box: 1
4. Brass welding rod: 2 (3' long)
5. Electrical welding rods 40.
6. Russain rod: 1 (1')
7. Hammer: 1
8. Old choke: 1
9. Saw old: 1
10. Iron pipe: 1 (2' long)
11. Russain pipe: 2 (bended)
12. Iron pipes shape: 4 (3' high)
13. Iron rods: 3 (3' & 2½')
14. Iron pipes: 4 (3' length)
15. Electric cable: 1 coil (8 feet)
16. Table Teak: 1
17. Radio transformer: 1
18. Stool iron: 2
19. Tube light: 1

The workman submitted his explanation in Tamil language. An English translation of the explanation (Ext. 2a) is on the record. The material portion of the translation reads:

“Not only do I deny that the articles mentioned in the memo were stolen by me but I strongly take objection to the charge of theft. Also, I would like to say a few words relating to the articles mentioned in the memo.

1. Teak-wood—4½' of length—I had bought it from the Timber Trust on payment of cash. It was 15' in length while buying. But for use they had been cut into pieces.
2. Cement bags—This is a regrettable affair. I had bought 10 measures of cement from outside shop for the purpose of paving the floor of the cow shed. I could not get a bill for this. They would not also give the bill. I would like to give the details relating to the sale to you in person.
3. Electric Switch Main Box—This was brought by me from my place.
4. Brass Welding Rod—When I was working under V. K. V. Menon Executive Engineer and was driving his own car, I was looking after of the repairs of his car. This had been bought for the purpose of welding work. This article available with me was the remnant of the one which had been given to me after using a portion of it.
5. Electric Welding Rod—This article also had been bought for the same reason. I would like to give details to you in person and in confidence about the same.
6. Russain Rod—I had bought this as jumper from an iron shop in Neyveli—2 selling old iron articles. It was one foot in length when buying. There is no practice of giving a bill by the iron shop.
7. Hammer—This was bought for my personal use from my place.
8. Old Choke—This was brought for the tube light fixed in my house in G. K. Colony.
9. Saw old—This also belongs to me.

The next items, namely, 10, 11, 12, 13 and 14 were all bought from the iron shop.

15. Electric Cable—There was no electric cable. It was only 5' wire. Cable is a high sounding term. It was bought for the electric iron box at Tirunelveli.
16. Teak table—This was got manufactured by buying planks. This was not a Corporation table.
17. Radio Transformer—When my radio was repaired, the old one was kept in safe condition. It was not one which was in a Corporation radio.
18. Stool Iron—This was bought in Cuddalore. They are available in plenty there.
19. Tube light—This was bought by paying cash from the Neyveli Electric shop.

I submit that for the above mentioned articles, I am prepared to show bills in person whenever you so require."

Since the explanation did not appear to be satisfactory to the employer, there was an enquiry ordered, in which several witnesses were examined. The workman himself participated before the Enquiry Officer along with his representative Kupaswami, who did cross examine the witnesses. The Enquiring officer proceeded more upon a confessional statement, said to have been made by the workman, than on any other evidence. This confessional statement was sought to be explained away by the workman as a statement forcibly obtained from him but the Enquiring officer did not believe in the explanation. The relevant portion from his report is set out below :

"The statement of Shri S. Swaymboo, that he gave the confessional statement, because he was threatened by the security staff, is not acceptable. Just because somebody threatens him, he cannot be expected to give a written statement saying, that he removed a number of materials belonging to the Corporation from the workspot. So, the plea, that he gave the confessional statement, because he was threatened by the security staff, cannot be accepted.

From Shri S. Swaymboo's statement dated 24th February, 1966 it is found, that 40 welding rods (item No. 9) were also recovered from his house. Certainly Shri Swaymboo would not have had any need to purchase these welding rods from outside and so these should have been removed only from the workspot."

On the above materials the enquiring officer recommended dismissal. That recommendation was accepted and the order of dismissal was made upon the workman .

5. I went through the evidence in order to satisfy myself whether the workman had succeeded in proving that the confessional statement had been forcibly extracted out of him. If there was such proof, then I might have condemned the finding on this point by the Enquiring Officer. I do not find, however, any evidence which goes to make the forcible extraction of confessional story acceptable to the Enquiring Officer with a degree of certainty. If that story goes, then the confessional statement, in his admission of guilt, is a safe basis to proceed upon. It may be that the admission is not an admission of theft of all the items, but even part of the charge has been proved, I cannot interfere with the penalty imposed. Further, the story of the workman that he purchased the non-admitted items remains a story only. Bills and vouchers for such purchase have not been produced, which the workman stated that he would do.

6. This being the position, I find no ground to interfere with the order of penalty imposed upon the workman.

7. In the result, I hold that the management of Neyveli Lignite Corporation Limited was justified in dismissing Shri Suyambu, Driver Grade II, Mines Branch, with effect from 27th July, 1966. As such he is not entitled to any relief.

This is my award.

Dated, December 23, 1968.

Sd./- B. N. BANERJEE,  
Presiding Officer.  
[No. 4/3/66-LRII.]

*New Delhi, the 7th January 1969*

**S.O. 252.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Selected Sudamdih Colliery, Post Office Sindri, District Dhanbad, and their workmen, which was received by the Central Government on the 30th December, 1968.

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD**

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

REFERENCE No. 25 OF 1968

**PARTIES :**

Employers in relation to the Selected Sudamdih Colliery, Post Office Sindri, District Dhanbad.

AND

Their Workmen.

**PRESENT :**

Shri Kamla Sahai, Presiding Officer.

## APPEARANCES :

*For the Employers*—Shri D. Narsingh, Advocate.

*For the Workman*—Shri Prasanta Burman, Advocate.

*Dhanbad, the 26th December, 1968*

## AWARD

By order No. 2/36/68-LRII dated the 4th April, 1968, the Central Government, in the Ministry of Labour, Employment and Rehabilitation, has referred an industrial dispute for adjudication to this Tribunal. The dispute as described in the schedule attached to the reference is as follows:—

## SCHEDULE

“Whether the dismissal of Shri E. H. Dosh, Electrician, by the management of Selected Sudamdih Colliery with effect from the 16th September, 1967 was justified? If not, to what relief is the workman entitled?”

2. The reference came up for hearing before this Tribunal today. At this stage, the parties have filed a compromise petition. The substance of the settlement between the parties is that the termination of the service of Shri E. H. Dosh, Electrician, by the management is accepted. On the other hand, the management agrees to pay Shri Dosh wages for one month and a half in view of his services for about two years and nine months. It has also agreed to pay one month's wages as *ex-gratia* payment in lieu of notice. Further, the management has agreed to pay Shri Dosh the amount due to him on account of bonus under the Payment of Bonus Act, 1965. The entire payment is to be made within 15 days from today. The method of payment is also given in this settlement and the parties are to bear their own costs. In my opinion, the terms of the settlement are fair and reasonable. I, therefore, accept the settlement and direct that it be recorded. I further direct that an award be passed in terms of the petition of settlement which will form part of the award. Let this award be submitted to the Central Government under section 15 of the Industrial Disputes Act, 1947.

(Sd.) KAMLA SAHAI,  
Presiding Officer.

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL, DHANBAD.

REFERENCE No. 25 OF 1968

Employers in relation to the Selected Sudamdih Colliery

AND

Their workmen.

*Memorandum of settlement*

The parties have mutually settled their dispute under Adjudication on terms as stated below:

1. The termination of the services of Shree E. H. Dosh, the workmen concerned will stand as ordered by the management.
2. The management shall treat Shree Dosh as if he was retrenched as on the date on which his services were terminated.
3. The workmen shall not claim re-employment under the management.
4. The management shall pay to Shree Dosh wages for one month and a half in view of his services for about two years and nine months and also one month's wages as *ex-gratia* payment in lieu of notice.
5. The management shall also pay to Shree Dosh the amount due to him on account of Bonus under the Payment of Bonus Act, 1965.
6. The workmen has no other claim against the management.
7. The above Payment shall be made within 15 days from today either personally to Shree Dosh when he comes to the Colliery Office to collect the same or by money order after deducting the M. O. commission to the address given by him with a letter for payment by Money Order.

8. Parties shall bear their own costs of these proceedings.

9. The Parties jointly pray that the Tribunal may be pleased to accept this settlement and give its Award in terms thereof in full and final disposal of the reference.

(Sd.) FRASHANT BURMAN,  
Advocate.

(Sd.) E. H. DOSH,  
workmen concerned.  
*For workmen.*

(Sd.) D. NARSINGH,  
Advocate.

(Sd.) J. C. NARANG,  
Partner.  
*For employers.*

[No. 2/36/68-LRII.]

*Dated, December 26, 1968.*

**S.O. 253.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 3), Dhanbad, in the Industrial dispute between the employers in relation to the Badjna Colliery of Messrs Oriental Coal Company, Post Office Nirshachatti, District Dhanbad, and their workmen, which was received by the Central Government on the 27th December, 1968.

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 3) AT DHANBAD

REFERENCE NO. 37 OF 1968

#### PRESENT :

Shri Sachidanand Sinha, Presiding Officer.

#### PARTIES :

Employers in relation to the Badjna Colliery

*Vs.*

Their workmen.

#### APPEARANCES:

*For Employers*—Shri K. C. Nandkeolyar, Dy. C.P.O.

*For Workmen*—S/Sri D. D. Singh, Vice President and B. Sharma, Asstt. Secretary,  
Colliery Mazdoor Sangh, Badjna Colliery Branch.

INDUSTRY : Coal

STATE : Bihar.

*Dhanbad, the 18th December, 1968*

#### AWARD

1. The Central Government, being of opinion that an industrial disputes exists between the employers in relation to the Badjna Colliery of M/s. Oriental Coal Company Limited, Post Office Nirshachatti, District Dhanbad and their workmen by its order No. 2/109/66-LRII dated the 25th of August, 1966, referred to the Central Government Industrial Tribunal, Dhanbad under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The Schedule is extracted below:—

#### SCHEDULE

“Whether the Management of Badjna Colliery of M/s. Oriental Coal Co., Post Office Nirshachatti, District Dhanbad was justified in superannuating the following workmen with effect from 1st April, 1966?”

- (1) Sri Amar Nath Sharma,—Loading-in-charge.
  - (2) Sri Mahabir Singh,—Magazine Guard.
  - (3) Sri Raman Gorai,—Shot Firer.
  - (4) Sri Raghunath Singh,—Depot Guard.
  - (5) Sri Ratnakar Banerjee,—Mining Sirdar.
- If not, to what relief are the workmen entitled?”

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 128 of 1968 on its file. While it was pending there the proceeding was

transferred to the Central Government Industrial Tribunal, No. 2, Dhanbad by the Central Government's Order No. 8/25/67-LRII dated the 8th of May, 1967 and there it was registered as reference No. 166 of 1967. The Central Government by its subsequent Order No. 8/71/68-LRII dated the 13th of August, 1968, transferred the dispute to this tribunal where it has been renumbered as reference No. 37 of 1968.

3. On the 12th of December, 1968 the parties filed a joint petition of compromise. It is duly verified by Sri K. C. Nandkeolyar, Dy. C.P.C., representing the employers and Sri D. D. Singh, Vice President, Colliery Mazdoor Sangh, Badjna Colliery Branch and Sri B. Sharma, Assistant Secretary, Colliery Mazdoor Sangh, Badjna Colliery Branch, representing the workmen. I consider the terms of compromise as reasonable and beneficial to the affected workmen. The compromise is therefore, accepted and the award is made in terms of the compromise. The compromise memorandum is enclosed herewith and made part of the award.

4. The award may now be submitted to the Central Government under Section 15 of the Industrial Disputes Act, 1947.

(Sd.) SACHIDANAND SINHA,  
Presiding Officer

Central Govt. Industrial Tribunal-Cum-  
Labour Court No. 3, Dhanbad.

BEFORE THE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL  
No. 3, DHANBAD.

In the matter of Reference No. 37 of 1968

Employers in Relation to Badjna Colliery of M/s. Oriental Coal Co. Ltd.

*Versus*

Their Workmen as Represented by the Union, Colliery Mazdoor Sangh.

*Joint Petition of Compromise*

Both the parties respectfully submit as under:—

1. That the Central Govt. has referred this dispute, being Ref. No. 37 of 1968, and the terms of reference, as set out in the Schedule thereto, are—

“Whether the Management of Badjna Colliery of M/s. Oriental Coal Co., Post Office Nirsachatti, Dist. Dhanbad, was justified in superannuating the following workmen with effect from 1st April, 1966?

- (1) Sri Amar Nath Sharma,—Loading-in-Charge;
- (2) Sri Mahabir Singh,—Magazine guard.
- (3) Sri Raman Gorai,—Shot firer,
- (4) Sri Raghunath Singh,—Depot guard.
- (5) Sri Ratnakar Banerjee,—Mining Sirdar.

If not, to what relief are the workmen entitled?”

2. That both the parties have, after mutual discussion and negotiations, resolved this dispute amicably on the following terms:

*Terms of Settlement*

- (a) The Management agrees to pay Rs. 200/- to each workman as *Ex-gratia* besides gratuity permissible under the Service Rules of M/s. Karamchand Thaper & Bros. (P) Ltd., and their dues, if any. This *Ex-gratia* payment is agreed without setting any precedence.
- (b) That the above payment shall be made within a period of 15 days from the date of the settlement i.e., 12th December, 1968.
- (c) That the Union accepts retirement on Superannuation on attaining the age of 58 years of the workmen concerned w.e.f. 1st April, 1966 under the Service Rules of M/s. Karamchand Thaper & Bros. (P) Ltd., who are in management and control of Badjna Colliery, as Secretaries and Treasurers.



(d) The Management further agrees that in case any of the Workmen concerned is otherwise physically fit, such a workman may be given employment after retirement in terms of the provisions of the said Service Rules.

3. That the said terms of settlement are fair and reasonable and may form part of the Award.

4. That the parties shall bear their own costs.

It is, therefore, humbly prayed by the parties that Your Honour may be graciously pleased to hold this settlement as fair and reasonable and give the award accordingly.

And for this act of kindness the parties shall, as in duty bound, ever pray.

Dated 12-12-68,

*For Workmen*

(1) (Sd.) DHARAMDEO SINGH,  
Vice President,  
Colliery Mazdoor Sangh,  
Badjna Colliery Branch.

(2) (Sd.) BINDESHWAR SHARMA,  
Asstt. Secretary,  
Colliery Mazdoor Sangh,  
Badjna Colliery Branch.

(Member Central Executive Committee)

*For Employers*

(Sd.) K. C. NANDKEOLYAR,  
Dy. Chief Personnel Officer.

[No. 2/109/66-LRIL]

*New Delhi, the 8th January, 1969*

**S.O. 254.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 3), Dhanbad, in the industrial dispute between the employers in relation to the Surendra East Loyabad Colliery of Messrs Surendra East Loyabad Colliery Company, Post Office Kusunda, District Dhanbad and their workmen, which was received by the Central Government on the 27th December, 1968.

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 3) AT DHANBAD

REFERENCE NO. 64 OF 1968

#### PRESENT :

Shri Sachidanand Sinha, Presiding Officer.

#### PARTIES :

Employers in relation to the Surendra East Loyabad Colliery,

AND

Their workmen.

#### APPEARANCES :

*For Employer*—Shri T. N. Ghosh.

*For workmen*—Shri R. Mitra, Secretary, Bihar Koyala Mazdoor Sabha.

INDUSTRY : Coal

STATE : Bihar.

*Dhanbad, the 11th of December, 1968*

#### AWARD

1. The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Surendra East Loyabad Colliery of Messrs Surendra East Loyabad Colliery Company, Post Office Kusunda, District Dhanbad, and their workmen by its order No. 2/153/66-LRIL dated the 15th of November, 1966, referred to the Central

Government Industrial Tribunal, Dhanbad under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The Schedule is extracted below:

#### SCHEDULE

"Whether the action of the management of the Surendra East Loyabad Colliery of Messrs Surendra East Loyabad Company in dismissing Shri Jagdeo Ram, Tub rider, from service with effect from the 14th April, 1966, was justified? If not, to what relief is the workman entitled?"

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 157 of 1966. While it was pending there the dispute was transferred to the Central Government Industrial Tribunal No. 2, Dhanbad by its order No. 8/25/67-LRII dated the 8th of May, 1967 and there it was registered as reference No. 193 of 1967. The Central Government by its subsequent order No. 8/71/68-LRII dated the 13th of August, 1968, transferred the dispute to the tribunal where it has been renumbered as reference No. 64 of 1968.

3. The Vice President, Bihar Koyala Mazdoor Sabha filed a written statement on behalf of the workman. Their case in brief is that the concerned workman Sri Jagdeo Ram, Tub rider, was working since long as a permanent employee. The management issued a chargesheet to the concerned workman on 30th March, 1966 on the ground of hauling a set of tubs without fitting a drag and he was charged for wilful breach of Coal Mines Regulation and habitual indiscipline. The workman submitted his reply to the chargesheet denying the charge. The management without holding a proper enquiry dismissed the workman from his service with effect from 14th April, 1966. According to the Union the finding of the enquiry committee was perverse and the principles of natural justice were not observed by the management and the latter was not justified in dismissing the workman from the service with effect from 14th of April, 1966.

4. The Employers have also filed their written statement and their contention is that Sri Jagdeo Ram was working as a Haulage Attendant at the colliery. According to the management Sri Jagdeo Ram allowed a set of tubs to be hauled out without a drag being fitted which was a serious breach of Coal Mines Regulation. On being interrogated Sri Jagdeo Ram gave a false report and used rough language. For the aforesaid misconduct a chargesheet dated 30th March, 1966 was issued to Jagdeo Ram to which he submitted the reply denying the charges. An enquiry committee consisting of three members of the Pit Safety Committee was formed to hold a departmental enquiry into the above chargesheet. Accordingly a departmental enquiry was held on 12th April, 1966 by the above committee. In the above departmental enquiry the misconduct mentioned in the chargesheet was satisfactorily established and Sri Jagdeo Ram was therefore, dismissed with effect from 14th April, 1966. It is alleged that Sri Jagdeo Ram was also punished in the past for several misconducts for which he was either warned or suspended for different periods. After dismissal Sri Jagdeo Ram voluntarily accepted all his dues in full and final settlement and has left the colliery. Therefore, according to the management the dismissal of Sri Jagdeo Ram was justified and he is not entitled to any relief.

5. The point for consideration is whether the management was justified in dismissing the workman Sri Jagdeo Ram from service with effect from the 14th April, 1966. The departmental enquiry was held on 12th April, 1966 and it recommended dismissal of the concerned workman which was accepted by the management. In industrial enquiries the question of *bonafides* or *malafides* of the employers is often at issue. This is the reason why domestic enquiries in industrial matters should be held with scrupulous regard for the requirements of natural justice. Care must always be taken to see that these enquiries are not reduced to empty formalities.

6. In this case an enquiry committee consisting of three persons viz. Sarvashri H. R. Gonai (2) N. C. Chakraborty and (3) S. N. Banerjee, was constituted. Ext. M. 6 is the enquiry report. It is signed by Sri H. R. Gonai and Sri N. C. Chakraborty. Sri S. N. Banerjee is not a signatory on the enquiry report. According to the workman Sri S. N. Banerjee did not sign the enquiry report because the enquiry report was a faked document and was prepared by the manager out of his own motion without considering the true facts. Sri H. R. Gonai (MW1) has stated in his evidence that Sri S. N. Banerjee could not join the enquiry committee on account of his illness. Sri S. N. Banerjee has been examined and is MW2. He does not say that he did not join the enquiry committee on account of his illness. Moreover it is not denied by him that he did not sign on the enquiry report as it was faked document and was prepared by the manager out of his own motion. The enquiry report is therefore vitiated on account of Sri S. N. Banerjee not joining the enquiry committee.

7. The enquiry was held on 12th April, 1966 at 4 p.m. On that very day five witnesses were examined viz. Sarvashri Nitahari Mukherjee, Manager (2) Krishnakishore Sinha, Overman (3) Hari Lohar, Fitter Mistry (4) Kuldip Chamar, Line Mistry and (5) Taleshwar Gop, Haulage Attendant. Their statements were recorded in Hindi by one Yadunandan Prasad because the two members of the enquiry committee viz. Sri H. R. Gonai and Sri N. C. Chakraborty had no knowledge of Hindi. Sri Yadunandan Prasad has also not been examined on behalf of the management. The report is in English and is signed by Sri H. R. Gonai and Sri N. C. Chakraborty. Sri N. C. Chakraborty has not been examined. The report is not prepared in English by H. R. Gonai. He has stated in his evidence that since he was not proficient in English, therefore, he asked Sri N. C. Chakraborty to write the report after translation. The report is not in the language of Sri H. R. Gonai (MW1). The other signatory on the report Sri N. C. Chakraborty has not been examined. Therefore, it is very difficult to rely even on the recital of the enquiry report. Sri H. R. Gonai one of the members of the enquiry committee has got no knowledge either of English or of Hindi. He has stated in his evidence that he does not possess complete knowledge of Coal Mines Regulations, 1957 and that he has not even read the standing order of the colliery. He has also not held any departmental enquiry prior to this. The officer chosen to hold the enquiry should be of a sufficiently high status to command the confidence of the employee. Here I find that Sri H. R. Gonai, one of the members of the enquiry committee was thoroughly incompetent to conduct the enquiry and as such the enquiry can not said to be a fair enquiry.

8. According to the workman the enquiry report was engineered by the manager without considering the true fact and the evidence adduced in this case also point to the same direction. Sri Nitahari, Mukherjee, Manager has appeared as a witness in the domestic enquiry on behalf of the management. From his evidence it transpired that he was the complainant and the chargesheet is also issued by the manager. The manager ordered the Secretary, Pit Safety Committee to constitute a committee consisting of three persons as members of the enquiry committee (Ext. M. 2). The notice of enquiry was also issued by the manager (Ext. M3). Sri H. R. Gonai (MW1) has stated in his evidence that the manager was present throughout the enquiry. The enquiry was being conducted in the office and in presence of the manager, Sri H. N. Mukherjee. All these facts clearly go to show that the manager who was the complainant had a real hand in the preparation of the enquiry report and as such the enquiry can not said to be a fair enquiry.

9. Before closing, a comment may be made on Ext. M. 14 which is said to be a clearance certificate dated 28th April 1968 granted by the concerned workman Jagdeo Ram. It is recited therein that the concerned workman Jagdeo Ram received the entire amount due against the management. Ext. M. 14 is written on the letter head of the management. There is no evidence as to who wrote out the contents of the Ext. M. 14. It is proved by MW2, Sri S. N. Banerjee and he also does not say in his evidence that the money was paid in his presence to Jagdeo Ram. Jagdeo Ram was also not confronted with Ext. M. 14 when he was examined on behalf of the workman. Nobody has stated on oath on the point that the money was received by the concerned workman in his presence. In this view of the evidence Ext. M. 14 is of no consequence.

10. The domestic enquiry suffers from several infirmities. The evidence discussed above clearly goes to show that the domestic enquiry was not held properly and in judicial spirit.

11. Therefore, I hold that the management of Surendra East Loyabad Colliery of Messrs Surendra East Loyabad Company in dismissing Sri Jagdeo Ram, Tub rider from service with effect from the 14th of April, 1966 was not justified. He is, therefore, entitled to be reinstated with full back wages from the date of his dismissal i.e. from 14th of April, 1966 upto the date of his reinstatement along with continuity of service.

12. This is my award. It may be submitted to the Central Government under Section 15 of the Industrial Disputes Act, 1947.

(Sd.) SACHIDANAND SINHA,

Presiding Officer,

Central Govt. Industrial Tribunal-Cum-  
Labour Court No. 3, Dhanbad.

[No. 2/153/66-I.II.]

**S.O. 255.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to

the Katras Choitudih Colliery, Post Office Malkera, District Dhanbad of Messrs Burraker Coal Company Limited and their workmen, which was received by the Central Government on the 30th December, 1968.

# BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act 1947.

REFERENCE NO. 58 OF 1968

## PARTIES :

Employers in relation to the Katras Choitudih Colliery, P.O. Malkera, District Dhanbad  
M/s. Burraker Coal Co. Ltd.,

AND

Their Workmen

## PRESENT :

Shri Kamla Sahai, Presiding Officer.

## APPEARANCES :

*For the Employers.*—Shri S. S. Mukherjee, Advocate.

*For the Workmen.*—Shri R. K. Jha on behalf of the Colliery Mazdoor Sangh.  
Shri Prasanta Burman, Vice-President, Mine Mazdoor Union, Sijua.

STATE : Bihar.

INDUSTRY : Coal.

*Dhanbad, dated the 25th December, 1968*

## AWARD

By order No. 2/62/68-LRII dated the 12th July, 1968, the Central Government, in the Ministry of Labour, Employment and Rehabilitation has made this reference to this Tribunal for adjudication of an industrial dispute which has been described in the schedule as follows:—

## SCHEDULE

“Whether the management of Katras Choitudih Colliery, Post Office Malkera, District Dhanbad of Messrs Burraker Coal Company Limited of which Messrs Bird & Company (Private) Limited, Post Office Sijua, District Dhanbad are the Managing Agents, was justified in refusing employment at the Katras Choitudih Colliery to the following workmen:—

1. Shri Musafir Sao.
2. Shri Bifan Pasi.
3. Shri Kedar Giri.
4. Shri Sampat Dubey.
5. Shri Ramlakhan Dusadh.
6. Shri Kameshwar Dusadh.
7. Shri Jaipat Dusadh.
8. Shri Judagir Gope.
9. Shri Munshi Mahato.
10. Shri Ramdeo Sao.
11. Shri Badhan Bhuia.
12. Shri Bihari Dusadh.
13. Shri Zafaralli Mian.
14. Shri Puna Gope.
15. Shri Brahmdeo Gope.
16. Shri Amrit Dusadh.
17. Shri Manu Mochi.
18. Shri Ganouri Ramani.
19. Shri Saklu Mahato.
20. Shri Ramchandra Mochi.
21. Shri Sukhdeo Dhobi.
22. Shri Chhotan Giri.
23. Shri Karoo Dusadh.
24. Shri Lila Mahato.
25. Shri Sital Dhobi.
26. Shri Keshwar Mahato.

27. Shri Chhota Karoo Sao.
28. Shri Bali Telli.
29. Shri Bihari Ram.
30. Shri Bara Karu Sao.
31. Shri Bifan Bhuian.
32. Shri Musafir Mahato.
33. Shri Rampati Singh.
34. Shri Rampati Dusadh.
35. Shri Manik Chand Mahato.
36. Shri Srichand Mahato.
37. Shri Jodhan Mahato.
38. Shri Rampati Pasi.
39. Shri Pyare Lal Kewat.
40. Shri Mathura Mahato.
41. Shri Bachu Ram Mahato.
42. Shri Syambarilal Pasi.
43. Shri Deba Rajwar.
44. Shri Gorakh Mochi.
45. Shri Sagram Rajwar.
46. Shri Saligram Mahato.
47. Shri Jagdoo Dusadh.
48. Shri Sitaram Dusadh.
49. Shri Ramchand'ra Bhuian.
50. Shri Sagina Dusadh.
51. Shri Charitar Mahato.
52. Shri Bara Sheonandan Dusadh.
53. Shri Chhota Kameshwar Dusadh.
54. Shri Jalliuddin.
55. Shri Jagdish Mahato.
56. Shri Bali Dusadh.
57. Shri Basant Ram.
58. Shri Jogesar Mahato.
59. Shri Chandwar Dusadh.
60. Shri Deolal Mahato.
61. Shri Sita Saran Sao.
62. Shri Rampati Sao.
63. Shri Prabhu Dusadh.
64. Shri Gangu Bhuian.
65. Shri Karoo Bhuian.
66. Shri Raghunandan Bhuian.
67. Shri Kuleshwar Pasi.
68. Shri Ramdas Mochi.
69. Shri Ghooj Mahato.
70. Shri Mangar Mahato No. III.
71. Shri Nageshwar Bhuian.
72. Shri Desai Bhuian.
73. Shri Dasrath Bhuian.
74. Shri Chhota Kunjan Bhuian.
75. Shri Bara Kunjan Bhuian.
76. Shri Tcju Bhuian.
77. Shri Ch. Karoo Bhuian.
78. Shri Sanichar Bhuian.
79. Shri Baleshwar Bhuian.
80. Shri Etwari Bhuian.
81. Shri Bhagloo Bhuian.
82. Shri Rajdeo Bhuian.
83. Shri Deba Bhuian.
84. Shri Ganaouri Bhuian.
85. Shri Khelu Bhuian.
86. Shri Balo Bhuian.
87. Shri Nankeshwar Mochi.
88. Shri Sheo Narain Sharma.
89. Shri Mangar Bhuian.
90. Shri Mahangoo Sao
91. Shri Jugal Ramani.
92. Shri Rojan Ram.
93. Shri Gurucharan Dusadh.
94. Shri Dinanath Dusadh.
95. Shri Tribeni Mahato.

96. Shri Nijammuddin Mian.
97. Shri Dakhan Bhuian.
98. Shri Madhy Rajwar.
99. Shri Bara Munshi Mahato.
100. Shri Balgovind Mahato.
101. Shri Baleshwar Dusadh.
102. Shri Tanu Bhuian.
103. Shri Nathu Pasi.
104. Shri Bara Jagdish Dusadh.
105. Shri Ram Pyare Dusadh.
106. Shri Ramratan Mahato.
107. Shri Ram Pradip Mahato.
108. Shri Baleshwar Mahato.
109. Shri Sidhari Dusadh.
110. Shri Balgovind Dusadh.
111. Shri Lakhi Mahato.
112. Shri Bara Ramdeo Dusadh.
113. Shri Ramdhani Bhuian.
114. Shri Charitar Dusadh.
115. Shri Debuchand Dusadh.
116. Shri Sohar Dusadh.
117. Shri Bandhu Bhuian.
118. Shri Dwarika Dusadh.
119. Shri Chhota Shyamlal.
120. Shri Bali Teli.
121. Shri Bhagan Bhuian.
122. Shri Raghu Bhuian.
123. Shri Shyamlal Bhuian.
124. Shri Madan Bhuian.
125. Shri Mangar Bhuian.
126. Shri Madho Bhuian.
127. Shri Karu Saw.
128. Shri Pradip Mahato.
129. Shri Sadhu Mahato.
130. Shri Mukhlal Dusadh.
131. Shri Bartu Bhuian.
132. Shri Gobardhan Rabidas.
133. Shri Karu Rabidas.
134. Shri Bara Faguni Bhuian.

"If not, to what relief are these workmen entitled?"

2. The workmen, represented by the Colliery Mazdoor Sangh, have entered into a compromise with the employers namely Messrs Burrakar Coal Co. Ltd., of which Messrs Bird & Co., (P) Ltd., are the Managing Agents. The Mine Mazdoor Union, Sijua, was originally party to the reference on behalf of the workmen. Shri Prasanta Burman of that union has now agreed that the compromise petition filed by the Colliery Mazdoor Sangh and the employers be recorded as a compromise between the employers and the workmen. Having considered the terms of the compromise, I consider them to be reasonable. I, therefore, accept the compromise and direct that the reference be disposed of in terms of the compromise petition which will form part of the award.

3. This is my award. Let it be submitted to the Central Government under section 15 of the Industrial Disputes Act, 1947.

(Sd.) KAMLA SAHAI,  
Presiding Officer.

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL NO. 1, DHANBAD

REFERENCE No. 58 OF 1968

PARTIES:

Employers in relation to Katras-Choitodih Colliery of Burrakar Coal Co. Ltd.

AND

Their Workmen.

The party above-named beg to submit as follows:—

That without prejudice to the respective contention of the parties the present dispute pending before the Hon'ble Tribunal has been amicably settled on the following terms:—

(1) That the workmen mentioned in Serial Nos. 3, 5, 12, 14, 36, 43, 49, 89, 90, 91, 96, 118 and 128 totalling 13 workmen are already working at Katras-Choitodih Colliery.

(2) That the workmen mentioned in Serial Nos. 10, 11, 15, 16, 18, 19, 23, 24, 31, 32, 33, 37, 41, 51, 63, 83, 84, 100, 107, 116, 119, 129, 130, 132 and 133 totalling 25 heads were transferred to Loyabad Colliery and are working there.

(3) That the above workmen mentioned in para 1 and 2 who are working at Katras-Choitodih Colliery and at Loyabad Colliery will continue to work there, and the period from 6th November, 1967 when they could not be provided work till their date of joining at the respective collieries will be treated as if they were on leave without wages for the purpose of continuity of their service only. The workmen working at Loyabad colliery will have no claim for work at Katras-Choitodih colliery.

(4) That the workmen mentioned in Serial Nos. 92, 112, 127 totalling 3 have been dismissed for proved misconduct and they will not be entitled to re-appointment at Katras-Choitodih colliery or at any other colliery of the management.

(5) That the workmen mentioned in Serial Nos. 61, 71, 74, 82, 85, 87, 98, 108, 113, 114, 117 and 126 totalling 12 heads have since resigned and they will not be entitled to re-appointment at Katras-Choitodih colliery or at any other collieries of the management.

(6) That the workmen mentioned in Serial Nos. 35 and 102 have since expired and as such the question of their employment at Katras-Choitodih or any other collieries of the management does not arise.

(7) That the workmen mentioned in Serial No. 28 has been repeated in Serial No. 120 and both are the same person.

(8) That the workmen mentioned in Serial No. 30 is not the workman of our colliery and as such providing him with employment does not arise.

(9) That the workmen mentioned in Serial Nos. 1, 2, 4, 6, 7, 8, 9, 13, 17, 20, 21, 22, 25, 26, 27, 28, 29, 34, 38, 39, 40, 42, 44, 45, 46, 47, 48, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 62, 64, 65, 66, 67, 68, 69, 70, 72, 73, 75, 76, 77, 78, 79, 80, 81, 86, 88, 93, 94, 95, 97, 99, 101, 103, 104, 105, 106, 109, 110, 111, 115, 121, 122, 123, 124, 125, 131, and 134 totalling 77 heads will be provided with work at Katras-Choitodih colliery within 14 days from the date of this settlement. These workmen will not be entitled to any compensation and the period from 6th November, 1967 till the date of their joining and it will be treated as if they were on leave without wages for the purpose of continuity of their service only.

(10) That the parties will bear their own cost and will not ask for any relief whatsoever.

(11) That the above terms finally dissolves all disputes pending before the Hon'ble Tribunal concerning 134 workmen mentioned in the schedule of the reference.

It is therefore, humbly prayed that the settlement may kindly be recorded and award passed in terms thereof.

*For Workmen:*

(Sd.) B. P. SINHA,

Vice President,

Colliery Mazdoor Sangh,

Dhanbad.

*For Employers*

(Sd.) A. K. CHATTERJEE,

Superintendent, J. W.

Messrs Bird & Co. (P) Ltd.,

at Mudidihi.

Owner: Burrakur Coal Co. Ltd.

(Sd.) BRIJNANDAN SINGH,

Secy., Colliery Mazdoor Sangh,

Katras-Choitodih Branch,

(Dated, 22nd December, 1968.

## ORDERS

*New Delhi, the 8th January 1969*

**S.O. 256.**—Whereas the Central Government is of opinion that an Industrial dispute exists between the employers in relation to the management of Mondal's Kenduadih Colliery Post Office Nawagarh, District Dhanbad and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal (No. (3), Dhanbad, constituted under section 7A of the said Act.

## SCHEDULE

Whether the management of Mondal's Kenduadih Colliery Post Office Nawagarh, District Dhanbad, was justified in stopping Shri Sheo Nath Pandey, Munshi, from work with effect from 1st June, 1968? If not, to what relief is the workman entitled?

[No. 2/241/68-LRII.]

**S.O. 257.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Balihari Colliery of Messrs Balihari Colliery Company (Private) Limited, Post Office Kusunda, District Dhanbad and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal (No. 3), Dhanbad, constituted under section 7A of the said Act.

## SCHEDULE

Whether the management of Balihari Colliery of Messrs Balihari Colliery Company (Private) Limited, Post Office Kusunda, District Dhanbad, was justified in suspending Sarvashri Ghamandi Mahato, Chetlal Mahato, Dahu Bhuia, Bhuneshwar Bhuia, Girdhari Mahato, and Manki Sao, Pick Miners, with effect from 22nd November, 1967, and subsequently dismissing them with effect from 20th March, 1968? If not, to what relief are these workmen entitled?

[No. 2/250/68-LRII.]

*New Delhi, the 13th January 1969*

**S.O. 258.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Ningha Colliery, Post Office Kalipahari, District Burdwan and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal, Calcutta, constituted under section 7A of the said Act.

## SCHEDULE

Whether the management of Ningha Colliery, Post Office Kalipahari, District Burdwan was justified in dismissing Shri Nasir Mia, Pump Khalasi with effect from the 1st May 1968? If not, to what relief is the workman entitled?

[No. 6/65/68-LRII.]



## CORRIGENDUM

*New Delhi, the 13th January 1969*

**S.O. 259.**—In the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), No. S.O. 4071, dated the 16th November, 1968, published in the Gazette of India, Part II, Section 3, Sub-Section (ii), at pages 5288 to 5292—

“at page 5292 in line 46, for 12th April, 1965 and 22nd April 1965, read 12th April 1967 and 22nd April 1967”.

[No. 6/17/68-LRII.]

BALWANT SINGH, Under Secy.

## (Department of Labour and Employment)

## ORDERS

*New Delhi, the 31st December 1968*

**S.O. 260.**—Whereas the industrial disputes specified in the Schedule hereto annexed are pending before Shri Jawan Singh Ranawat, Presiding Officer, Industrial Tribunal, Rajasthan, Jaipur;

And whereas Shri Jawan Singh Ranawat, Presiding Officer of the Industrial Tribunal Rajasthan, Jaipur has retired and relinquished charge of his appointment with effect from the 31st May, 1968;

And whereas for the ends of justice and convenience of parties, the said disputes should be disposed of without further delay;

Now, therefore, in exercise of the powers conferred by section 7A, and sub-section (1) of section 33B of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal, with Shri Gopal Narain Sharma, as the Presiding Officer with headquarters at Jaipur withdraws the proceedings in relation to the said disputes and the applications under the proviso to sub-section (2) of section 33 and section 33A of the said Act and arising out of the said disputes, from Shri Jawan Singh Ranawat, and transfers the same to Shri Gopal Narain Sharma, Presiding Officer, Industrial Tribunal, Jaipur for the disposal of the said proceedings with the direction that the said Tribunal shall proceed with the said proceedings from the beginning and dispose of the same according to law.

## SCHEDULE

Sl. No.	Parties to the dispute	Reference number and date to the Industrial Tribunal	S.O. of Gazette/Year of publication
1	2	3	4
1.	Employers in relation to M/s Bikaner Gypsums Limited, Bikaner and their workmen.	No. 35/2/64-LRI, dt. 27-1-1965.	448/65
2.	Employers in relation to M/s Bikaner Gypsums Limited, Bikaner and their workmen.	No. 35/8/65-LRI, dt. 7-10-1965.	3245/65
3.	Employers in relation to Palana Colliery, Palana and their workmen.	No. 8/120/65-LRII, dt. 1-12-1965.	3828/65
4.	Employers in relation to the Mining Engineering Government, Jaipur.	No. 36/30/65-LRI, dt. 16-3-1966.	898/66
5.	Employers in relation to Central Bank of India Limited, Bombay and their workmen.	No. 51/64/65-LRIV, dt. 26-2-1966.	679/66
6.	Employers in relation to M/s Bikaner Gypsums Limited, Bikaner and their workmen.	No. 24/26/66-LRI, dt. 27-6-1966.	1967/66
7.	Employers in relation to L.I.C. of India, Ajmer and their workmen.	No. 70/13/66-LRIV, dt. 27-6-1967.	2282/67

1	2	3
8.	Employers in relation to Bikaner Gypsums Limited and their workmen.	No. 24/19/67-LRI, dt. 7-8-1967. 2816/67
9.	Employers in relation to Jaipur Mineral Development Syndicate, Jaipur and their workmen.	No. 24/1/67-LRI, dt. 21-10-1967. 3858/67
10.	Employers in relation to State Bank of Bikaner & Jaipur and their workmen.	No. 51/44/66-LRIV, dt. 30-10-1967. 4012/67
11.	Employers in relation to M/s Bikaner Gypsums Limited, Bikaner and their workmen.	No. 24/33/67-LRI, dt. 15-12-1967. 4547/67
12.	Employers in relation to M/s Bikaner Gypsums Limited, Bikaner and their workmen.	No. 24/35/67-LRI, dt. 18-12-1967. 4652/67
13.	Employers in relation to Udaipur Mineral Development Syndicate Limited, Bhilwara and their workmen.	No. 36/38/67-LRI, dt. 23-12-1967. 84/68
14.	Employers in relation to M/s Bikaner Gypsums Limited, Bikaner and their workmen.	No. 24/1/68-LRI, dt. 6-2-1968. 646/68
15.	Employers in relation to Punjab National Bank Limited, New Delhi and their workmen.	No. 23/2/68-LRIII, dt. 5-2-1968. 645/68
16.	Employers in relation to Punjab National Bank Limited, New Delhi and their workmen.	No. 51/65/67-LRIII, dt. 17-4-1968. 1476/68
17.	Employers in relation to Punjab National Bank Limited, New Delhi and their workmen.	No. 23/15/68-LRIII, dt. 25-4-1968. 1571/68
18.	Employers in relation to Punjab National Bank Limited, Bikaner, and their workmen.	No. 23/23/68-LRIII, dt. 16-5-1968. 1829/68

*Particulars of the applications pending before the Industrial Tribunal, Rajasthan, Jaipur under Section 33A of Industrial Disputes Act, 1947*

Sl. No.	Application No. and Year	Parties to the dispute	
		Applicant	Opposite parties
1.	1/67	Shri Bhagawan Singh	Jaipur Udhog Ltd., Sawaimadhopur.
2.	2/67	Shri Bhanwar Khan	Bikaner Gypsums Ltd., Bikaner.
3.	3/67	Shri Amrat Lal	Jaipur Udhog Ltd., Sawaimadhopur.
4.	4/67	Shri Hanuman Prashad	Jaipur Udhog Ltd., Sawaimadhopur.
5.	5/67	Rashtriya Gypsums Karamchari Sangh, Jamsar,	Bikaner Gypsums Ltd., Bikaner.

*Particulars of the applications pending before the Industrial Tribunal, Rajasthan, Jaipur, under Section 33(2)(B)*

Sl. No.	Application No. and Year	Parties to the disputes of Industrial Disputes Act, 1947	
		Applicant	Opposite parties
1.	M.C. No. 1/67	Bikaner Gypsums Ltd., Bikaner.	Shri Nathu Singh.
2.	M.C. No. 1/67	Bikaner Gypsums Ltd., Bikaner.	Shri Shyam Deo Tiwari.

*New Delhi, the 6th January 1969*

**S.O. 261.**—Whereas, the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Advance Insurance Company Limited, Calcutta and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Calcutta constituted under section 7A of the said Act.

#### SCHEDULE

Whether the Management of the Advance Insurance Company Limited, P-38, India Exchange Place, Calcutta-1, was justified in terminating the services of Shri Gouri Shankar Mishra, a peon of the Company with effect from the 13th July, 1968? If not, to what relief is the workman entitled?

[No. 25/10/68-LR.III.]

*New Delhi, the 9th January 1969*

**S.O. 262.**—Whereas an industrial dispute exists between the management of Bikaner Gypsums Limited, Bikaner (hereinafter referred to as the said Company) and their workmen represented by the Gypsum Mine Workers' Union, Bikaner and Rashtriya Gypsum Karamchari Sangh, Jamsar (hereinafter referred to as the Unions);

And whereas the said company and the Unions have, by a written agreement, in pursuance of the provisions of sub-section (1) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), agreed to refer the said dispute to arbitration of the person mentioned therein, and a copy of the said arbitration agreement has been forwarded to the Central Government;

Now, therefore, in pursuance of the provisions of section (3) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the said arbitration agreement, which was received by it on the 24th December, 1968.

#### *Agreement*

(Under Section 10A of the Industrial Disputes Act, 1947).

#### BETWEEN

##### *Name of parties:*

Representing Employers—Shri H. Choudhury, Agent, M/s. Bikaner Gypsums Ltd., Bikaner.

Representing Workmen—Shri A. K. Mukherjee, Personnel Manager, Bikaner Gypsums Limited, Bikaner.

##### *Gypsum Mine Workers Union*

Shri V. N. Gupta, Secretary, Gypsum Mine Workers Union, Bikaner.

##### *Rashtriya Gypsum Karamchari Sangh*

Shri Dilbagh Singh, Vice-President, Rashtriya Gypsum Karamchari Sangh, Jamsar.

It is hereby agreed between the parties to refer the following Industrial Disputes to the arbitration of Shri O. Mahepathi, Dy. Chief Labour Commissioner (C), Government of India, Ministry of Labour and Employment, New Delhi.

##### (i) Specific matter in dispute.

(a) "Whether the proposed amendment in T.A. Rules of Bikaner Gypsums Limited applicable to the employees drawing basic salary or wages less than Rs. 200 as notified by the management in their notice dated 24th May, 1968 is legal and justified and if not, to what relief the workmen are entitled?"

(ii) Details of the parties to the dispute including the name and address of the Establishment or undertaking involved.

(iii) Name of the Unions, if any, representing the workmen in question.

(iv) Total number of workmen employed in the undertaking affected.

(v) Estimated number of workmen affected or likely to be affected by the dispute.

(b) "Whether the proposed amendment in T.A. Rules of Bikaner Gypsums Limited applicable to the employees drawing basic salary of Rs. 200 and above but less than Rs. 500 as notified by the management in their notice dated 17th/24th September, 1968 is legal and justified and if not, to what relief the workmen are entitled?"

The Management of Bikaner Gypsums Limited, Sadul Club Building, Bikaner, and its workmen represented by the Rashtriya Gypsum Karamchari Sangh, Jamsar, and the Gypsum Mine Workers' Union, Jamsar.

1. Rashtriya Gypsum Karamchari Sangh, Jamsar (Bikaner).

2. Gypsum Mine Workers' Union, 19, Sethia Quarter, Bikaner.

320 (Approx.).

320 (Approx.).

We further agree that the decision of the Arbitrator shall be binding on us.

The Arbitrator shall make his award within a period of six months or within such further time as is extended by mutual agreement between us in writing. In case the Award is not made within the period aforementioned the reference to arbitration shall stand automatically cancelled and we shall be free to negotiate for further arbitration.

*Signature of the parties*

*Representing Employers:*

1. Sd./- H. CHOUDHURY,  
6.12.68.

2. Sd./- A. K. MUKHERJEE,

Rashtriya Gypsum Karamchari Sangh  
(Sd.) DILABGH SINGH,

*Representing Workmen:*

Gypsum Mine Workers Union  
(Sd.) V. N. GUPTA.

*Witnesses:*

1. Sd/- C. L. TAJ.

2. Sd/- B. L. OZHA.

[No. 24/59/68-LRI.]

O. P. TALWAR, Under Secy.